

# DEBATE ON ARTICLES OF IMPEACHMENT

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## HEARINGS OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

SECOND SESSION

PURSUANT TO

H. Res. 803

A RESOLUTION AUTHORIZING AND DIRECTING THE  
COMMITTEE ON THE JUDICIARY TO INVESTIGATE  
WHETHER SUFFICIENT GROUNDS EXIST FOR THE  
HOUSE OF REPRESENTATIVES TO EXERCISE ITS  
CONSTITUTIONAL POWER TO IMPEACH

RICHARD M. NIXON  
PRESIDENT OF THE UNITED STATES OF AMERICA

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JULY 24, 25, 26, 27, 29, and 30, 1974



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## DEBATE ON ARTICLES OF IMPEACHMENT

### Business Session, Impeachment Inquiry

WEDNESDAY, JULY 24, 1974

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The committee met, pursuant to notice, at 7:45 p.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti and Latta.

Impeachment Inquiry staff present: John Doar, special counsel; Samuel Garrison III, minority counsel; Albert E. Jenner, Jr., senior associate special counsel; Bernard Nussbaum, senior associate special counsel; and Richard Cates, senior associate special counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; Alan A. Parker, counsel; Daniel L. Cohen, counsel; William P. Dixon, counsel; Arden B. Schell, counsel; Franklin G. Polk, associate counsel; Thomas E. Mooney, associate counsel; Michael W. Blommer, associate counsel.

The CHAIRMAN. The committee will come to order.

#### STATEMENT OF HON. PETER W. RODINO, JR., A REPRESENTATIVE IN CONGRESS FROM THE 10TH CONGRESSIONAL DISTRICT OF THE STATE OF NEW JERSEY

The CHAIRMAN. Before I begin, I hope you will allow me a personal reference. Throughout all of the painstaking proceedings of this committee, I as the chairman have been guided by a simple principle, the principle that the law must deal fairly with every man. For me, this is the oldest principle of democracy. It is this simple, but great principle which enables man to live justly and in decency in a free society.

It is now almost 15 centuries since the Emperor Justinian, from whose name the word "justice" is derived, established this principle for the free citizens of Rome. Seven centuries have now passed since the English barons proclaimed the same principle by compelling King John, at the point of the sword, to accept a great doctrine of Magna Carta, the doctrine that the king, like each of his subjects, was under God and the law.

Almost two centuries ago the Founding Fathers of the United States reaffirmed and refined this principle so that here all men are under the law, and it is only the people who are sovereign. So speaks our Constitution, and it is under our Constitution, the supreme law of our land, that we proceed through the sole power of impeachment.

We have reached the moment when we are ready to debate resolutions whether or not the Committee on the Judiciary should recommend that the House of Representatives adopt articles calling for the impeachment of Richard M. Nixon.

Make no mistake about it. This is a turning point, whatever we decide. Our judgment is not concerned with an individual but with a system of constitutional government.

It has been the history and the good fortune of the United States, ever since the Founding Fathers, that each generation of citizens, and their officials have been, within tolerable limits, faithful custodians of the Constitution and of the rule of law.

For almost 200 years every generation of Americans has taken care to preserve our system, and the integrity of our institutions, against the particular pressures and emergencies to which every time is subject.

This committee must now decide a question of the highest constitutional importance. For more than 2 years, there have been serious allegations, by people of good faith and sound intelligence, that the President, Richard M. Nixon, has committed grave and systematic violations of the Constitution.

Last October, in the belief that such violations had in fact occurred, a number of impeachment resolutions were introduced by Members of the House and referred to our committee by the Speaker. On February 6, the House of Representatives, by a vote of 410 to 4, authorized and directed the Committee on the Judiciary to investigate whether sufficient grounds exist to impeach Richard M. Nixon, President of the United States.

The Constitution specifies that the grounds for impeachment shall be, not partisan consideration, but evidence of "treason, bribery, or other high crimes and misdemeanors."

Since the Constitution vests the sole power of impeachment in the House of Representatives, it falls to the Judiciary Committee to understand even more precisely what "high crimes and misdemeanors" might mean in the terms of the Constitution and the facts before us in our time.

The Founding Fathers clearly did not mean that a President might be impeached for mistakes, even serious mistakes, which he might commit in the faithful execution of his office. By "high crimes and misdemeanors" they meant offenses more definitely incompatible with our Constitution.

The Founding Fathers, with their recent experience of monarchy and their determination that government be accountable and lawful, wrote into the Constitution a special oath that the President, and only the President, must take at his inauguration. In that oath, the President swears that he will take care that the laws be faithfully executed.

The Judiciary Committee has for 7 months investigated whether or not the President has seriously abused his power, in violation of that oath and the public trust embodied in it.

We have investigated fully and completely what within our Constitution and traditions would be grounds for impeachment. For the past 10 weeks, we have listened to the presentation of evidence in documentary form, to tape recordings of 19 Presidential conversations, and to the testimony of nine witnesses called before the entire committee.

We have provided a fair opportunity for the President's counsel to present the President's views to the committee. We have taken care to preserve the integrity of the process in which we are engaged.

We have deliberated. We have been patient. We have been fair. Now, the American people, the House of Representatives, the Constitution, and the whole history of our Republic demand that we make up our minds.

As the English statesman, Edmund Burke said during an impeachment trial in 1788; "It is by this tribunal that statesmen who abuse their power are accused by statesmen and tried by statesmen, not upon the niceties of a narrow jurisprudence, but upon the enlarged and solid principles of state morality."

Under the Constitution and under our authorization from the House, this inquiry is neither a court of law nor a partisan proceeding. It is an inquiry which must result in a decision—a judgment based on the facts.

In his statement of April 30, 1973, President Nixon told the American people that he had been deceived by subordinates into believing that none of the members of his administration or his personal campaign committee were implicated in the Watergate break-in, and that none had participated in efforts to cover up that illegal activity.

A critical question this committee must decide is whether the President was deceived by his closest political associates or whether they were in fact carrying out his policies and decisions. This question must be decided one way or the other.

It must be decided whether the President was deceived by his subordinates into believing that his personal agents and key political associates had not been engaged in a systematic coverup of the illegal political intelligence operation, of the identities of those responsible, and of the existence and scope of other related activities; or whether, in fact, Richard M. Nixon, in violation of the sacred obligation of his constitutional oath, has used the power of his high office for over 2 years to cover up and conceal responsibility for the Watergate burglary and other activities of a similar nature.

In short, the committee has to decide whether in his statement of April 30 and other public statements the President was telling the truth to the American people, or whether that statement and other statements were part of a pattern of conduct designed not to take care that the laws were faithfully executed, but to impede their faithful execution for his political interest and on his behalf.

There are other critical questions that must be decided. We must decide whether the President abused his power in the execution of his office.

The great wisdom of our founders entrusted this process to the collective wisdom of many men. Each of those chosen to toil for the people at the great forge of democracy—the House of Representatives—has a responsibility to exercise independent judgment. I pray that we will each act with the wisdom that compels us in the end to be but decent men who seek only the truth.

Let us be clear about this. No official, no concerned citizen, no Representative, no member of this committee, welcomes an impeachment proceeding. No one welcomes the day when there has been such a crisis of concern that he must decide whether “high crimes and misdemeanors,” serious abuses of official power or violations of public trust, have in fact occurred.

Let us also be clear. Our own public trust, our own commitment to the Constitution, is being put to the test. Such tests, historically, have come to the awareness of most peoples too late—when their rights and freedoms under the law were already so far in jeopardy and eroded that it was no longer in the people’s power to restore constitutional government by democratic means.

Let us go forward. Let us go forward into debate in good will, with honor and decency, and with respect for the views of one another. Whatever we now decide, we must have the integrity and the decency, the will, and the courage to decide rightly.

Let us leave the Constitution as unimpaired for our children as our predecessors left it to us.

I now recognize the gentleman from Michigan.

Mr. HUTCHINSON. Thank you, Mr. Chairman.

I certainly agree with the opening paragraphs of your statement, and I want to compliment you upon a statement in which you have strong and firm belief, although I would disagree with parts of it. I certainly wanted to say that I certainly compliment you upon its opening several paragraphs.

We now proceed to consider the large mass of evidential material which was assembled during many months and presented to us by committee staff, and by the testimony of witnesses who appeared before us.

During the next few days, we will be weighing the evidence and acting upon it. After a period of general debate, we will be discussing amendments and voting upon them. And finally, the end product of our deliberations will be manifest. Either we shall by majority vote have recommended one or more grounds for impeachment against the President, or all of those proposed for adoption will have been defeated in our deliberations.

The people will have an unusual glimpse into the discussions of those charged with the decisionmaking in a unique judicial process. But perhaps ours is more of a political than a judicial function after all. The fact is that, of course, judges and juries deliberate behind closed doors, but by the committee’s action in opening these discussions, it has, in effect, determined that our function is more political than judicial. I think the public should know that until now the only decisions made by this committee have been procedural ones. No substantive matter has yet been resolved.

Early in the inquiry the staff submitted a memorandum on what constitutes an impeachable offense within the meaning of the Constitution, but the committee took no action upon it, it being recognized that

no definition could be drawn which would be agreed to probably by most members. Thus, as of this minute, the committee has not resolved just what an impeachable offense is.

As the staff assembled evidence, many of us felt that the committee should decide and give some direction to the staff as to the scope of the inquiry. We thought the committee should direct the staff to those areas of inquiry in which the committee itself determined that there might be merit so that time and effort would not be consumed in frivolous or otherwise nonmeritorious allegations. But such a course of action would have required the committee to make decisions of substance, and no decisions were made.

The articles of impeachment which are to be exhibited tonight are, like any legislative bill, merely a vehicle upon which the committee may work its will. They will be open to additions, deletions, amendments, and substitutions. Each member of this committee individually weighing the evidence against his own concept of what warrants impeachment will come to his own conclusion on how he votes on the articles in their final form. Each of us is struck by the enormity of the decisions that we are called upon to make.

As I see it, and I state only my personal views, a vote for an article of impeachment means that a member is convinced that the article states an offense for which the President should be removed from office, and that there is evidence which supports the charge beyond a reasonable doubt.

Unlike criminal jurisprudence, there is discretion in the court to make the sentence fit the crime. The Constitution mandates that conviction on impeachment shall carry with it the removal from office, nothing less.

It seems to me that, then, that in determining in my own mind whether a specific charge states an impeachable offense, I would have to decide whether I thought the offense charged is of sufficient gravity to warrant removal of the President from office because of it. In other words, some offenses may be charged for which there is convincing evidence, and still such offenses may not, in the judgment of a member, be so serious as to justify impeachment and removal of a President of the United States from office.

Earlier today, the Supreme Court announced that the President of the United States is required by law to comply with a certain subpoena duces tecum served upon him in the case of the *United States v. Mitchell and others*, by submission of the subpoenaed material to the trial judge for his private examination, and that the judge shall deliver to the Prosecutor only those portions which are relevant to the case, returning the balance of the documentation to the President without disclosing its contents.

Since this committee has requested the tapes of the same conversations from the President, and then subpoenaed them, the question arises whether our committee should proceed further until the availability of the additional evidence to the committee is determined. Many members on this side, Mr. Chairman, feel strongly that we should not, we believe the American people will expect us to examine and weigh all available evidence before we decide the momentous and most difficult issue before us.

Even now, Mr. Chairman, we hope that the Chair will consider whether, in view of the events of today, the committee ought not first to determine to postpone consideration of articles of impeachment until the evidence now that has become available through the Court can be made available to this committee.

The CHAIRMAN. I recognize the gentleman from Massachusetts, Mr. Donohue.

Mr. DONOHUE. Thank you, Mr. Chairman.

Pursuant to the procedural resolution which this committee adopted yesterday, I move that the committee report to the House a resolution together with articles of impeachment, impeaching Richard M. Nixon, President of the United States.

Now, a copy of this resolution is at the clerk's desk and I understand a copy is also before each member.

The CHAIRMAN. I recognize the gentleman from Massachusetts for purpose of general debate on his resolution for not to exceed 15 minutes and every other member of the committee will be recognized for purposes of debate not to exceed 15 minutes following Mr. Donohue's presentation.

Mr. Donohue.

**STATEMENT OF HON. HAROLD D. DONOHUE, A REPRESENTATIVE  
IN CONGRESS FROM THE THIRD CONGRESSIONAL DISTRICT OF  
THE STATE OF MASSACHUSETTS**

Mr. DONOHUE. Thank you again, Mr. Chairman.

This is a historic debate and the motions I have just offered to this committee have their roots in the most fundamental precept of free men, that no individual is above the law.

On July 20, 1787, the Constitutional Convention had before it the great question, "Shall the Executive be removable on impeachment?"

Mr. Gouverneur Morris, a delegate to that Convention, spoke forcibly in opposition. He wanted no impeachment clause in the draft of our Constitution. But he listened intently as first Benjamin Franklin and then James Madison argued on behalf of such a clause and finally just before the question was voted, Mr. Gouverneur Morris announced that his opinion had been changed by the arguments presented in debate.

The impeachment clause was adopted by the Convention and became section 4 of article II of the Constitution of the United States and the sole power of impeachment was vested in the House of Representatives under article I, section 2 of the Constitution.

Now, pursuant to that constitutional power, House Resolution 803, as stated by our distinguished chairman was adopted by the House of Representatives on February 6 by a vote of 410 to 4. That resolution directed this committee to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional authority to impeach the President of the United States.

For the past several months, as also has been stated, this committee has been continuously engaged in the careful conduct of this Presidential impeachment inquiry. Under absolutely neutral leadership I believe that our chairman has well established this committee's over-



riding motivation of honesty, decency, thoroughness and objectivity to the satisfaction of the great majority of the American citizens.

Now, in truth, there were and there are no positive material instruments available to us such as those by which we can measure a precise distance or pronounce the exact time of day to guarantee the errorless performance of our duty. The human means through which we must try to make the right measurement of conduct that is required in this historical task exists only in the individual minds and consciences of each of the committee members.

These are the basic resources by which we must each determine the substance and the culpability of the evidence related to the several allegations that in the course of the official conduct of his office President Richard M. Nixon engaged in certain activities designed to obstruct justice, to unlawfully invade the constitutional rights of private citizens, to refuse compliance with the duly authorized and properly served subpoenas of a committee of the Congress, to misuse executive agencies for personal and political benefit, and that President Nixon in other and diverse ways failed to fulfill his constitutional obligations to insure the faithful execution of our laws.

Now the awesome constitutional duty of each member of this committee is to make an impartial determination as to whether or not the evidence before us warrants a reasonable judgment that Richard M. Nixon as President has seriously, gravely, purposefully, and persistently abused and misused the power entrusted to him by the people of these United States.

Mr. Chairman, in my conviction the hour for this decision has arrived. To this end I believe the time has come to report to the House such resolutions, articles of impeachment, or other recommendations as we deem proper. On these enormous matters I have carefully observed the witnesses who appeared before this committee, heard their testimony, listened to the summation of counsel on both sides, and I have fully studied all of the evidence.

Mr. Chairman, I am most willing to listen to any further debate that may develop on the impeachment articles. I am prepared to vote on this momentous question before us and I can but simply say this. My vote will be conscientiously cast in what I most sincerely believe is the best interests of my country.

I reserve the balance of my time, Mr. Chairman.

The CHAIRMAN. The gentleman is advised that while he has 15 minutes remaining, the rule—while he has 15 minutes, the Chair has to state that according to the proceeding and according to the policy that we have adopted, no time would be reserved. Therefore, I now recognize the gentleman from Illinois, Mr. McClory, for 15 minutes, for purposes of debate only.

#### **STATEMENT OF HON. ROBERT MCCLORY, A REPRESENTATIVE IN CONGRESS FROM THE 13TH CONGRESSIONAL DISTRICT OF THE STATE OF ILLINOIS**

Mr. MCCLORY. Thank you, Mr. Chairman. I judge from the remarks of the gentleman from Massachusetts that indeed he has come to a resolution of this momentous question that is before us. Nevertheless, Mr. Chairman, let me express the view that this impeachment inquiry

undertaken by our House Judiciary Committee has been both historic and honorable. Impeachment is, of course, a political process, both political in the sense of governmental action and political in that it involves partisan interests and views.

It would be the grossest understatement on my part to suggest that Watergate and all that the word implies has not caused serious—perhaps permanent and irreparable injury to my party, the Republican Party. And this is so—despite the fact that no element of our established Republican Party organization was involved and no Republican Member of the Congress has been in any way implicated in this whole affair.

Let me assert, on the contrary, that Republicans and Democrats are anxious to erase this blemish from our party. I have heard it said by some that they cannot understand how a Republican could vote to impeach a Republican President. Let me hasten to assert that that argument demeans my roll here. It would infer that no matter what high crimes and misdemeanors might have been committed that, if attributable to a Republican President, then I as a Republican am foreclosed from judging the merits of the case. I cannot and do not envision my role in that dim light.

As a purely partisan matter, would it enhance our Republican Party if, despite the evidence and the weight of constitutional law, we as Republicans on this side of the aisle decide to exonerate a Republican President accused of high crimes and misdemeanors simply because he and we are Republicans?

I see that line as leading to Republican Party disaster.

A viable two-party system to my mind is an institution worthy of preserving second only to our constitutionalism of checks and balances. Preserving our Republican Party does not to my mind imply that we must preserve and justify a man in office who would deliberately and arbitrarily defy the legal processes of the Congress, nor can our party be enhanced if we as Republican Members of the U.S. House of Representatives, tolerate the flouting of our laws by a President who is constitutionally charged with seeing that the laws are faithfully executed as provided in article 2.

We will enhance our Republican Party and assure a viable two-party system only if we are courageous enough and wise enough to reject such conduct even if attributed to a Republican President.

The second question which we must answer is not what is best for our party, but what is best for our Nation.

While the investigation has been far reaching and has in my opinion delved into some peripheral areas, I cannot help but recognize that on the major subjects which have been investigated, the work of the committee and of our committee staff has been both objective and bipartisan.

I would like particularly to observe that we have been assisted by able counsel and to make a general observation that the members of the minority staff, Republican staff, have contributed substantially to the overall work product of our inquiry.

Despite our partisan differences, I would add that you, Mr. Chairman, have in general been very fair with the minority. The American

public need have no fear that the Republican interests have not been ably and appropriately served by our ranking member, Mr. Ed Hutchinson of Michigan, and by my other distinguished and able colleagues who sit on the Republican side in this committee room.

I shall turn at once to the main object of our inquiry, namely, the numerous allegations of wrongdoing charged against the President of the United States, all of which allegations we have investigated over a period of many months for the purpose of ascertaining whether or not President Nixon should be charged with the commission of an impeachable offense.

The most serious allegations, and those upon which the President's accusers have placed principal reliance, go under the general title of Watergate and a coverup.

Our majority counsel, Mr. Doar, in interpreting the information before us, has expounded the thesis that the President organized and managed the Watergate coverup from the time of the breakin on June 17, 1972, up until the present time.

While serious questions exist regarding the President's authorization or acquiescence in an obstruction of justice, a conclusion which might be reached from examining the transcripts of taped conversations and other evidence, the thesis advanced by Mr. Doar, that the President was in charge of a coverup from the time of the breakin, is in my mind unjustified in the light of the evidence presented to our committee.

Our chief minority counsel, the able Mr. Sam Garrison, made an important and extremely significant point in his final summation of the Watergate evidence. He said "Mr. Doar's case of circumstances showing Presidential involvement from the beginning is a very, very weak one because you cannot simply aggregate suspicions, you cannot aggregate inferences upon inferences, you can only aggregate facts."

Watergate is a serious matter. Many in and out of the White House have been involved in this tragic episode, but while some voluminous evidence has been produced, I question seriously that it is of the clear and convincing nature that should impel us to indict the President on a charge of coverup or obstruction of justice.

Instead, the case against the President rests upon circumstantial evidence, inferences, innuendoes, and a generous measure of wishful thinking on the part of some who could indict the President even without adequate proof of wrongdoing in the Watergate affair.

Now, in the light of today's Supreme Court decision, there may be indeed other available evidence to the committee within the next few days or weeks, substantial additional evidence from the White House tapes, upon which this committee can better judge the guilt or innocence of the President in the whole Watergate affair.

The doctrine of absolute executive privilege, upon which the President and his counsel relied, has been substantially rejected by the Supreme Court, and we can expect that hopefully we will get promptly and without equivocation from the White House the additional tapes which we also subpoenaed and which are now under the President's decision to be made available to the Special Prosecutor, and we also

have the mechanism for excising those irrelevant parts which might not be appropriate for us to see.

Although, on the basis of evidence thus far received, the case involving Watergate has been less than convincing, there are other subjects in which the facts are virtually undisputed—and where the only unsettled question is whether or not an impeachable offense has been committed under the Constitution to which I made reference.

If the extremely serious subject of Watergate results, nevertheless, in a weak case against direct involvement by the President, this should not be construed to mean that there has been no wrongdoing at the White House.

Watergate—and the alleged coverup—involves the offense of obstruction of justice; for instance, payments of hush money, inducing witnesses to commit perjury, and others.

These offenses have all been committed, at the White House, or by the President's most intimate and trusted aides and friends.

But if the President is not personally and criminally liable—because the evidence does not directly and personally implicate him—nevertheless, we may appropriately ask:

“Has the President fulfilled his obligation to see to a faithful execution of the laws—a solemn obligation imposed by the Constitution?”

This obligation is above and beyond that of other citizens, all of whom are required to obey the laws. We may ask further: “Is the office of the Presidency being operated in the manner intended by the Constitution, when, under the guise of national security, Federal bureaucracy, dissatisfaction with the head of the FBI, personal animosities for enemies—and “friends”—we experience burglaries, unlawful wiretaps, and bugging, shredding, and concealment of evidence, misuse of the CIA, FBI, IRS, and a host of other misdeeds.”

It should not be hard for my solid Midwest constituents, Republicans, Democrats, and Independents alike, to see and understand what is troubling me.

Believe me, it is also troubling them. The question remains whether these acts and omissions of Richard Nixon as President are to be approved or denounced.

If, in these respects, the President is to be denounced, and if this President is to be called to account for such acts and omissions, impeachment is the appropriate and constitutionally designated vehicle for delineating specific charges against him.

What about the offenses committed by or charged against Halde-  
man, Ehrlichman, Colson, LaRue, Dean, Liddy, Hunt, Magruder,  
Chapin, Mardian, Strachan, Kalmbach, Mitchell, and Kleindienst?

There is substantial authority for attributing their misconduct to the President in a strictly legal sense and require him to account for their offenses. But there is the higher constitutional obligation to see that such criminal acts are not committed or condoned, a constitutional demand to see that the laws are obeyed, particularly in the President's own house, which we call the White House.

After receiving evidence for weeks and weeks, evidence which has been frequently peripheral, as it relates to direct involvement of the President in Watergate and other crimes, I ask myself, is this any way to run a White House, or a country?

Finally, the clearest and most convincing issue before us, and one which is perhaps more fundamental to our inquiry, is that of the committee's subpoenas requesting information from the President.

Fundamental to this entire impeachment inquiry is his obligation to provide us with the information which we require so that we can perform our role. We do want a strong Chief Executive, but we also want a Congress which is given full recognition, as well as the courts.

Likewise, it is essential that the President respect that part of article I of the U.S. Constitution which vests in the House of Representatives "the sole power of impeachment." The House Judiciary Committee, as a designated unit of the House of Representatives, is endeavoring to fulfill that role with honor and with dignity, consistent with our responsibilities.

This particular time in our history demands a Congress capable of exercising not only the lawmaking authority, but also its power of oversight function, which includes that of the extraordinary authority of impeachment.

Earlier this year, the President promised full cooperation with our inquiry, consistent with his responsibilities to the office of the Presidency. Despite this pledge, the only materials which we have received have come from the grand jury and from the Special Prosecutor, except some that have accidentally fallen into our hands.

On May 30, the committee sent a letter to the President informing him of the possible consequences of his failure to comply with our subpoenas. We said, "In meeting their constitutional responsibility, committee members will be free to consider whether your refusals in and of themselves might constitute a ground for impeachment."

The committee has taken this stand because the President's noncompliance with the committee's subpoenas is a defiance of the powers of the Congress and impairing our ability to "preserve, protect, and defend the Constitution of the United States."

In this sense, it seems to me, the President's failure to comply threatens the integrity of the impeachment process itself. His action is a direct challenge to the Congress in the exercise of its solemn constitutional duty.

These, then, are the issues which are disturbing me, as we approach this final phase of our assignment under the House resolution authorizing and directing the comprehensive impeachment inquiry which my colleagues and I have been conducting and which we must resolve deliberately and responsibly within the next few days.

Thank you, Mr. Chairman.

The CHAIRMAN. I recognize for purposes of general debate only the gentleman from Texas, Mr. Brooks, not to exceed 15 minutes.

**STATEMENT OF HON. JACK BROOKS, A REPRESENTATIVE IN CONGRESS FROM THE NINTH CONGRESSIONAL DISTRICT OF THE STATE OF TEXAS**

Mr. Brooks. Thank you very much, Mr. Chairman.

This committee has heard evidence of governmental corruption unequalled in the history of the United States, the coverup of crimes, obstructing the prosecution of criminals, surreptitious entries, wire-

tapping for political purposes, suspension of the civil liberties of every American, tax violations, and personal enrichment at public expense, bribery and blackmail, flagrant misuse of the FBI, the CIA, and the IRS. Eighteen individuals have been convicted or pleaded guilty and six have been indicted for criminal activities directly related to Mr. Nixon's reelection efforts or activities which originated within the White House.

These individuals are not obscure Government officials, but include Cabinet officers, personal assistants, the closest personal advisers to Richard Nixon.

Never in our 198 years have we had evidence of such rampant corruption in government. We must decide whether this corruption attached to the President, whether there is evidence that the President by his actions, or inactions, failed in his constitutional responsibility to faithfully execute the law.

We on this committee, both Republicans and Democrats, have taken our constitutional responsibility most seriously and have pursued the facts, often without the cooperation of those possessing information, and at times in the face of planned efforts to mislead and divert us from the truth.

It is our constitutional duty to determine whether there is sufficient cause to bring Richard Nixon before the U.S. Senate for a trial and removal from office. In resolving this issue, we must put aside the legalistic jargon of our profession, present to the American people in plain language our best judgment as to whether there is evidence that Richard Nixon has brought disgrace and disrespect to the office of the President.

We must put to rest the argument that the corruption we have witnessed in the last 5 years is only an extension of what has always been done. I do not share this view or the view of those who hold that all our Presidents have lied, have broken the law, have compromised the Constitution. And if George Washington accepted bribes, it would **not** make robbery a virtue, nor would it be grounds for overlooking such acts by his successor.

There is no political gain for anyone or any political party in this procedure. If ever there was a time to put aside partisanship, now is that time. There would be no Democratic gain from removing a Republican President and having him replaced by another Republican who could represent, and might well receive a great outflowing of support from our people. We must now report to the House of Representatives and the American people our conclusions as to whether there is sufficient evidence that Mr. Nixon, while serving as President, has violated his oath of office and has thereby jeopardized our constitutional system of government.

This is not a pleasant duty, but it is our constitutional duty. Its performance may mean ignoring personal and political relationships of long standing. But, we as well as the President, are on trial for how faithfully we fulfill our constitutional responsibility.

I want to thank the Chairman for recognizing me, and in the interest of expediting this resolution of this very difficult problem, I yield the remainder of my time.

The CHAIRMAN. I recognize the gentleman from New York, Mr. Smith, and not to exceed 15 minutes, for purposes of debate only.

**STATEMENT OF HON. HENRY P. SMITH III, A REPRESENTATIVE  
IN CONGRESS FROM THE 36TH CONGRESSIONAL DISTRICT OF  
THE STATE OF NEW YORK**

Mr. SMITH. Mr. Chairman, ladies and gentlemen of the Committee: I know that we all feel the weight of the historic action we are about to take, after months of diligent inquiry into the question of whether or not the President of the United States should be impeached. It is a solemn duty we have undertaken pursuant to the requirements of the Constitution of the United States.

How we decide here, how the House of Representatives may decide if we recommend impeachment, how the Senate may resolve the issue if the House shall vote impeachment of the President, are decisions which will affect our Nation in one way or another for the rest of time.

I take this opportunity, Mr. Chairman, of expressing my respect for the other 37 lawyer members of this committee who have borne the grueling work of this inquiry for months, and I take this opportunity also to express my respect for and my thanks to the members of the impeachment inquiry staff and the regular staff members of this committee for the dedicated professional job each and every one of them has done during this historic project. The massive amount of information, documents, testimony, and legal precedents they have gathered, assimilated, organized, and presented with skill during these months of this inquiry are almost beyond belief.

The constitutional duty of this committee in regard to impeachment, possibly that of the House and possibly that of the Senate, always is a sad duty, is a particularly sad one here, in that it contemplates the possible impeachment and conviction of a President who has ended our direct participation in a bitter and divisive war which was not of his making, and who, history may show, has done more than any person now living to bring about peace and brotherhood in this world, through his bold initiatives in establishing communication and bases for understanding with other powerful nations and other powerful peoples, and through his initiatives, carried out by painstaking and tireless work of dedicated aides, in creating the climate for and the support of a real cease-fire in the Middle East and now in Cyprus.

But, even so, if this President has also been guilty of "treason, bribery, or other high crimes and misdemeanors" as it is stated in the Constitution, then it is the constitutional duty of the House of Representatives to impeach him, and the constitutional duty of the Senate to convict him.

To determine whether there are valid grounds for impeachment has been the duty of this committee. We have a resolution and articles of impeachment before us and we have for months examined the mountains of evidence and listened to the witnesses.

There is here no charge of treason, so the question is, "Do we think the President is guilty of charges of bribery or other high crimes and misdemeanors?" The President says he is not.

What measure or standard of evidence is necessary for this committee to say he is or may be guilty? I think it is something more

than "probable cause" which is sufficient for indictment by a grand jury and something less than "satisfaction beyond a reasonable doubt" which is required for conviction of a crime. Mr. St. Clair, the President's lawyer, has suggested a standard of "clear and convincing proof," and Mr. Doar, the chief counsel of this committee's impeachment inquiry staff, appeared to endorse the standard.

Except for one area, I am not satisfied that there has been produced before this committee clear and convincing proof of the President's personal involvement in actions which would be impeachable. The testimony is generally not solid and clear. It raises inference after inference, many negative ones, against the President, and some positive ones in his favor. But there is precious little solid hard evidence of his personal impeachable misdeeds.

Except for the area of the secret bombing in Cambodia at the President's order between March 18, 1969, and May 1, 1970, where I have not yet made up my mind, I should have to vote against impeachment of the President on the state of the evidence which we have seen. This is why I was delighted today when the Supreme Court ruled 8 to 0 that the President must deliver the tapes and memoranda subpoenaed by Special Prosecutor Jaworski. I believe that this means that this committee will at last have this material available for inspection so we can determine once and for all whether the President is guilty of impeachable offenses or whether he is not.

I think it is absolutely imperative that this committee make the effort to secure this evidence. I believe that any other course, in the present state of the evidence before this committee, would be self-defeating and not worthy of the effort which has already gone into this inquiry and investigation.

I thank you, Mr. Chairman, for recognizing me. And if my understanding of the reservation of time, as of yesterday afternoon, is still valid, I reserve the balance of my time.

The CHAIRMAN. I would like to advise the gentleman as I advised the gentleman from Massachusetts, that the policy of the committee was enunciated yesterday that there is no reservation of time afforded to any member.

I recognize the gentleman from Wisconsin, Mr. Kastenmeier, for purposes of general debate only and not to exceed 15 minutes.

#### **STATEMENT OF HON. ROBERT W. KASTENMEIER, A REPRESENTATIVE IN CONGRESS FROM THE SECOND CONGRESSIONAL DISTRICT OF THE STATE OF WISCONSIN**

Mr. KASTENMEIER. Thank you, Mr. Chairman.

The committee has for the last 8 months been engaged in this quest for facts, evidence, and for the truth. And, until now, the American people have been very patient. Mr. Chairman, I want to commend you for stating tonight that we will proceed inexorably to a conclusion of these deliberations, notwithstanding the Supreme Court's decision, for I do not believe that the Supreme Court decision will have or should have any immediate effect on our committee's deliberations. It would have been helpful to have this evidence before, but we did not. We are prepared to accept the moment of truth and hopefully, Mr. Chairman, we can conclude perhaps even this very week.



This being a concluding episode, I would like to take this opportunity to pay my respects to our professional staff. I am proud to claim Mr. John Doar and Mr. Richard Cates from my home State of Wisconsin, and I would like to pay my respects to Mr. Jenner from the neighboring State of Illinois. And to the others who have been so ably counseling us in the past months.

I am sure that long after this matter has been put to rest they can go to bed nights secure in the knowledge that they have been faithful to their conscience and to their country. Indeed, if those legal advisers to the President in former times had such a view toward the President, this proceeding and other proceedings might not have been necessary.

I would also say that, as the general debate progresses, and as the articles of impeachment are offered and debated, the specifics of the case against the President hopefully will emerge. But even then, in the next several days and under the procedural limitations, we cannot hope to treat very much of the massive evidence we have considered over these many months. However, the public is aware that these materials are now released. Television, radio, newspaper, news magazines have attempted to communicate what this mass of evidence means. While we here will have but a few hours of your attention in terms of the discussion of its implications, the release of the material should help the public even more.

Mr. Chairman, we have labored long and hard in an effort to be fair to the President and to those among us who must sit in judgment but may not share common views. We must now decide how to vote—for or against impeachment. It is not our duty to attempt to assess whether Mr. Nixon committed common crimes. That is a determination which ultimately rests elsewhere.

In my own case, my decision has been made. I have concluded after careful consideration of all of the evidence that President Nixon must be impeached and removed from office. I say this, the record of the administration in other fields notwithstanding. This decision was not reached lightly, nor was it made out of personal animus towards the President. The process of impeachment is a drastic undertaking, not only for the Congress but for the country, and cannot be taken casually.

As I have thought many times, if Mr. Nixon were the leader of my party, if he were Mr. Johnson or Mr. Kennedy, and had been charged with the same offenses, could I freely and with as much certainty come to the same conclusion. I have to answer yes. I believe clear and compelling evidence does exist and leads inescapably to only one conclusion: That President Nixon's conduct in office is a case history of the abuse of Presidential power. The abuses documented by the evidence gathered by this Committee are numerous and will be discussed hereinafter as they have, in part, been discussed before.

I hope, too, that some of the issues and charges which may not originally be in the draft articles before us, whether they are on the bombing of Cambodia or the Presidential impoundments, will be fully considered. Whether or not they constitute any final articles approved by this committee, they should be considered as a pattern of a whole in terms of Presidential disregard for truth and for law.

Mr. Chairman, it is important to draw a clear distinction between preserving the man and preserving the office. Mr. Nixon has consistently argued that his fight against the committee and in the courts is designed to save the office. In fact, I would suggest that it is designed to save one person, Mr. Nixon.

Impeachment is the one way in which the American people can say to themselves that they care enough about their institutions, their own freedom and their own claim to self-government, their own national honor, to purge from the Presidency anyone who has dishonored that office. This power of impeachment is not intended to obstruct or weaken the office of the Presidency. It is intended as a final remedy against executive excess, not to protect the Congress against the President, but to protect the people against the abuse of power by a Chief Executive. And it is the obligation of the Congress to defend a democratic society against a Chief Executive who might be corrupt.

Justice Brandeis warned Americans of the dangers of illegality of official conduct. "In a government of laws," he wrote, "the existence of the government will be imperiled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If government becomes a law breaker, it breeds contempt for the law. It invites every man to become a law unto himself. It invites anarchy."

Mr. Chairman, in my view Richard Nixon has shown disrespect for the citizens of this Nation and he has violated their Constitution and their laws, engaging in official wrongdoing. Society, through its elected representatives, must condemn this conduct. Otherwise we will cease to have a government of laws.

I will, therefore, vote for the impeachment of Richard M. Nixon and I do this with the belief that the House of Representatives will agree and that his trial in the Senate will result in his conviction and removal from office.

Thank you, Mr. Chairman.

The CHAIRMAN. The Chair is going to be compelled to recess for a period of time and the Chair will state that the meeting will resume at the call of the Chair but it is necessary that we do recess for a period of time.

[Recess.]

The CHAIRMAN. The committee will be in order, and the committee will resume its proceeding; I now recognize the gentleman from New Jersey, Mr. Sandman, for purposes of debate only, for a period not to exceed 15 minutes. Mr. Sandman.

**STATEMENT OF HON. CHARLES W. SANDMAN, JR., A REPRESENTATIVE IN CONGRESS FROM THE SECOND CONGRESSIONAL DISTRICT OF THE STATE OF NEW JERSEY**

Mr. SANDMAN. Thank you, Mr. Chairman.

I am not going to attempt to cover all of the charges that have been made. I am going to isolate my statements to the major charge of the Watergate and Watergate coverup. If it were not for that I don't think we would be here tonight.

I think it is altogether proper, too, to commence by making a little bit of a review on what we have done, where we are tonight, and where we hope to go from here.

My mind is unchanged as a result of the Supreme Court decision today. I believe that this committee should go on with its works. There are sufficient votes here for an impeachment resolution. This everyone knows. In fact, there has been that many votes here for a long time. There is no use kidding anybody about that. So regardless of what is in the new tapes, a majority does exist here to impeach the President for some reason or another.

Now, I think that to say that this is the most unusual proceeding that I have ever been a part of would be a tremendous understatement. The thing that amuses me is it is as important as it is, and even though it has been held in confidence behind closed doors, what I read in the papers from day to day led me to believe I could not have been here. I must have been somewhere else.

We started in closed session and we swore by everything that was holy that we would uphold the rules of confidentiality. That has been the joke of the century. There has been nothing confidential in this committee. Members of the other side have reported to the media every hour on the hour, some every hour on the half-hour. We have become the first forum in the history of man to release to the public every shred of information we have before a single decision was ever made. When did that ever happen before? Never. But we have done it.

And then when we think about releasing information, I am wondering—we have released tens of thousands of pages to the public and to the media, to the media to destroy, if they choose, and some people in the media like to do that, and this involved hundreds of innocent people. Where was the American Civil Liberties Union about that? Isn't it strange that they have been remarkably silent. But willy-nilly, we have been willing through one method or another to give the media for whatever method they want to use it, every shred of evidence that exists, and most of it is not evidence.

The interesting thing about this, too, is what happened the other day, just for example. One thing that apparently the media hadn't had yet was the large document that had 715 pages in it about miscellaneous documents. I was asked and so were the other members of this committee asked to vote for this willy-nilly without the discussion of a single page or a single document. That is hardly the way to conduct a good hearing, is it? But that is the way we have been working. Fortunately, that was defeated.

And now another thing that happened the other day, I raised a question which I thought was a good one. I wanted to know whether or not counsel could advise me as to whether or not the articles of impeachment should be specific. Should each article involve a singular subject? I thought it should.

Counsel never opened their mouths. We never got that far. And the chairman hit the gavel and under the table that went. So there has never been a decision even on that point. And from the law as I understand the law, the articles that we have been handed tonight does not fit what the law requires because here you have a general article of impeachment, everything including the kitchen sink. And this they

say, and from best information available to me from some of the best legal minds in the world, should not be. I wanted to know. But I got no answer.

Now, I have consistently said from time to time that the chairman has done a good job, a fair job, and I think he has. I complimented the staff. I complimented counsel, both majority and minority, but there has never been really much difference between those two. And I meant what I said then as I mean it tonight. But things started to change 3 weeks ago. Three weeks ago it changed from a nonpartisan inquiry into a highly partisan prosecution if ever there was one.

Now, let's see what happens. Better than that, I suppose I should do away with current events and get down to why we are here tonight, and I hope that this has some advantage. I really do. I don't know as we are going to change any votes. I hope we do. One way or another I hope it serves a purpose. I can be persuaded. If somebody for the first time in 7 months gives me something that is direct, I will vote to impeach and maybe that should be the challenge to my 36 other colleagues tonight, 37 of us.

Now, I want to say that at the very outset. This is not a case as far as I am concerned for or against Richard Nixon. I ran for Governor in my State last year and Richard Nixon did not help me one blessed bit, so I have no reason to feel kindly toward him.

[Laughter.]

Now, second, this is the third time in my life that I have had to vote on whether or not someone should hold a very high office, and I think because of the coincidence it is worth telling you a little bit about it.

The first vote that I cast in my life as a public official was when I was the youngest member, newly elected, of the New Jersey State Senate. The first vote had to do with the seating of a Democrat senator and if there is anything I know it is the New Jersey election law. I listened to all of the experts from around the country testify and at that time you only needed 11 Republicans to sign a petition and that Democrat would never sit in the Senate. And we had 16 including me. I was the only Republican who voted to seat that Democrat. As a result of a long investigation, it proved I was the only Republican right. He was seated.

Sixteen years to the day later, I cast my first vote in the Congress and that was on the seating of Adam Clayton Powell. What a coincidence. It meant no difference to me whether his name was Powell, Nixon, or what it was. I voted my conscience as I understood the law, without the persuasion of the Washington Post, it and others. I voted as I understood the law.

I was 1 of only 13 Republicans and I did not want Adam seated. But under the Constitution as I understand it, the Congress did not have the right to exclude him for the reason they set forth. I was 1 of only 13 Republicans who voted to seat Adam Clayton Powell, purely on constitutional grounds, only 1 of 13.

I may be one of less than that tonight, who knows, and more than that, who cares. I am doing this the way I think it should be done. This is the way I believe I pledged my oath of office, and although there were only 13 Republicans who voted to seat Adam, the U.S. Supreme Court said that only 13 Republicans were correct because they reversed the Congress and seated Adam.

Now for the first time in my life I have to judge a Republican, a man who holds the most powerful office in the world, and make no mistake about that.

I look back over history and I try to judge what I should do here. This is the most important thing I shall ever do in my whole life and I know it, far more important than whatever happens to me as a result of this vote, and I know history tells me that 107 years ago the country was thrown into a fit of hysteria and, in less than 3 days, President Johnson was impeached during that fit of hysteria. That has gone down in history as one of the darkest moments in the Government of this great Nation, and I do not propose to be any part of a second blotch on the history of this great Nation.

How was it all done?

The hysteria that was generated, should it be done?

Let's not use some words by some great people. Let's use all of them and put them together.

James Madison, among other things, said that a President should be impeached only for something extremely serious, which affects his capability to conduct the affairs of the Nation and, because of James Madison, a word was inserted into that part of the Constitution having to do with impeachment. He was not satisfied that it could be any crime because he said it had to be a high crime, serious one, and this is what I think we have to follow.

I am not a nitpicker. You can find almost anything that will disturb you. There are lots of things wrong, there were lots of crimes committed by lots of people, but were they placed at the door of the President? I do not think so, but maybe you can convince me in the rest of the time that we have to argue and if you do I will vote to impeach, but not on what I have gotten so far.

Madison said that the President should be removed only for the most serious offense. To do otherwise would deprive the electorate of the right to select. To do otherwise would place a mechanism in the hands of a majority party that any time they choose they could throw the country into a turmoil and replace the Chief Executive, and that should never happen. So it should not be any kind of a crime. It should be a serious crime affecting the Chief Executive's ability to rule the Nation.

Some people say we are here as a grand jury. I think we are here as much more than a grand jury because even Mr. Doar has said—and I do compliment his ability as a lawyer. I think he is one of the best I have ever met, and one of the fairest I have ever met, too, up to 3 weeks ago. [Laughter.] But even he said the weight of evidence must be clear, it must be convincing, and let's keep to those two words. You cannot substitute them for anything else; clear and convincing.

Now, prove to me that they are clear and convincing and I will vote to impeach, but you cannot and should not under any circumstance attempt to remove the highest office in the world for anything less than clear and convincing, anything less than something highly serious, and this is what I approved—I propose to do.

Now, many wrongs have been committed, no question about it, but were those wrongs directed by the President?

Is there direct evidence that said he had anything to do with it? Of course there is not.

And what has happened in the interim? Fair articles like this, a reliable news magazine, I am told—what does it say? And if this is not trying to incite the people into a frenzy against good judgment, you tell me what is.

Newsweek, July 22, 1974, the evidence, only half of an extremely damaging sentence. It says, quoting the President: "I want you all to stonewall it. Let them plead the fifth amendment, cover it up. Do everything, save the plan."

Terrible, is it not? They left off the other half of the President—as did that very fair Washington Post, when they buried on page 20 the other half of the sentence, which quoted the President as saying "But I would rather it be done the other way."

This is what has happened every day, every hour on the hour. So we do not have to do this in frenzy. Let's do it the right way.

The first tape of March 21, 1973, worried me to death. When I went to bed that night I made up my mind the President's goose is cooked, he does not have a chance. But the following morning I heard another tape that was made only 3 hours later on the same day, and that completely did away with what was happening in the first tape. So you cannot use one tape as this fair magazine has done. You cannot use one part of a tape as the Washington Post did. You have to use it all in context to arrive at the truth, and this is what I suggest we do.

Now, it is not the purpose of any media to make the news. It is the purpose and the objective of the media to fairly report the news.

Now, to say as this committee did over many weeks everything that Haldeman knew, Nixon knew, that is not proof.

I want to pose this one last thing. I wonder what the prosecutor in the U.S. Senate is going to do for witnesses. I wonder what he is going to do. He is going to plead his whole case on tapes, because he cannot use any of the witnesses we had, because every one of them testified, no act of wrongdoing on the part of the President. If you do not think so, go through the lot.

Who was the man who handled the phone? LaRue. Was there any involvement by the President? His answer to the question, no.

As to the man who received the money, Bittman, the attorney, did your client make any threat to get clemency from the President or any of his agents? The answer, no.

As to the man who supposedly directed the payments of the money, Mitchell, did the President have anything to do with that direction? The answer, no.

Now, with these kinds of witnesses, how do you prove that case before the Senate?

Is there a soul here who honestly believes that 67 out of 100 Senators are willing to accept this kind of evidence? I do not think so, and I think this is why we are here.

Now, maybe in the time that is remaining, someone, somehow, will point out the fact that I am only human and I am not infallible. Maybe I overlooked something. Maybe there is a tie-in with the President.

All right. There are 37 of you. Give me that information. Give it to 202 million Americans, because up to this moment you have not.

Thank you.

The CHAIRMAN. I recognize the gentleman from California, Mr. Edwards, for purposes of debate only, and not to exceed 15 minutes. Mr. Edwards.

**STATEMENT OF HON. DON EDWARDS, A REPRESENTATIVE IN CONGRESS FROM THE NINTH CONGRESSIONAL DISTRICT OF THE STATE OF CALIFORNIA**

Mr. EDWARDS. Thank you very much, Mr. Chairman.

I always listen with keen interest to our eloquent colleague from New Jersey. I think the fact with regard to the leaks are, of course, unfortunate, but I don't think it is really accurate to say that the leaks came all from this side. It has been made very clear by the press and by others that the faucet dripped from both taps, the hot and the cold.

Insofar as the evidence that was released that my friend Mr. Sandman criticized, I voted against that too, but I think it should be pointed out that the President's counsel, Mr. St. Clair was here. He was a part of all of these proceedings, and he recommended very strongly to the committee that this evidence be released.

Mr. Chairman, there's been some mention by some of our colleagues tonight regarding the Supreme Court decision and I think that we should remember that the Supreme Court was very explicit in the decision. The evidence that will be released to Mr. Jaworski has only to deal with the criminal trials that will take place. It will take several months perhaps for the production and the examination and the deciphering of those tapes, and then only the portions relevant to the criminal trials will be given to the Special Prosecutor. The remainder will be sealed and returned to the White House. Our needs with regard to this large impeachment inquiry are much wider. Our needs are much wider in scope than those of the Special Prosecutor and in the criminal case. And incidentally our subpoenas still remain in effect, and we invite the White House, the President, to honor those subpoenas. And it certainly would make our job a great deal easier. And I think the President should be reminded that the Supreme Court rejected its claim of absolute privilege.

But, Mr. Chairman, this is one member who thinks that the welfare of the country dictates that we proceed deliberately, but with due speed in this undertaking that has been assigned to us by the full House of Representatives. And I would hope that the committee does not consider any delay because of the Supreme Court decision.

Mr. Chairman, you and I and our 36 colleagues, and our splendid staff, have worked here in room 2141 Rayburn for many weeks. We have learned much about the President and all of the President's men and, indeed, quite a lot about each other. More importantly I think, we have learned the lesson, and we are indebted substantially to Mr. Doar, and Mr. Jenner, and Mr. Cates, and the fine members of the staff for this relearning process. This is a lesson we were all taught in school and by our parents, and which we in turn tried to pass on to our children, and it has to do with the value and the beauty of our Constitution, and the understanding that representative government, if it is going to work, requires that we all respect and obey the Con-

stitution. And that means all 220 million of us. It is the compact we have with each other that enables us to live together, in peace, to pursue happiness in raising our children, and enjoying our friends. It requires that we treat one another with decency and respect when we are at work and when we are at school. It is the cement that holds us together as a decent and humane society.

The President of the United States is also a citizen, just like the rest of us, and the Constitution applies to him also. In many respects, and that was pointed out earlier tonight, more so, because he has a lot more power than any of us has. Our founders recognized this. They recognized the frightening power that the President has, that we give the President, and the grave danger to the Republic should he abuse it. And so they very specifically inserted in this Constitution that he should be removed by Congress should he gravely abuse this power, and I emphasize the word "gravely".

Mr. Chairman, all our colleagues are dedicated people and excellent lawyers. Our committee in its seemingly endless weeks of deliberations I think behaved rather well in accordance with the American traditions of due process and fair play. We invited the President's talented attorney to be a part of this process, to call his own witnesses, to question our witnesses, and to present every facet of the President's case.

I agree with my colleague, Mr. McClory, that we can take some pride in our effort to be impartial and fair. But, we're divided on the question of whether or not President Nixon's violations of the Constitution threaten the American Government, the liberties of the people and the Constitution itself. Yes, we disagree on whether or not the evidence supports the serious charges that are contained in this bill of impeachment that was delivered to each of us tonight.

I would most certainly accept Mr. St. Clair's premise that a direct connection must be proved between the President and the alleged offenses. I strongly disagree, however, when he argues that the case against the President is based only upon inferences, one piled on the other. There I strongly disagree.

Both Mr. St. Clair and Mr. Garrison insist that the only basis for this impeachment inquiry rests on whether or not the President was by intent a participant in the Watergate coverup. These two fine lawyers should get high ranks from the President for their efforts to limit the scope of this inquiry, and certainly our job would be much easier if we could accept this thesis. Unfortunately for the President's defense, this is not the case, and the thousands upon thousands of pieces of evidence that we have reviewed in these past weeks each a much broader picture. Indeed, a Presidential course of constitutional misbehavior and abuse of power commencing only a few months after he was inaugurated for the second time and continuing until the present.

Where then do I find myself? Yes; I have disagreed politically with the President for more than 20 years. Like my dear friend and colleague on my left, Bob Kastenmeier, I have had to subject my motives to the test of whether or not if the shoe were on the other foot, if we were judging a Democratic President and one with whose views I agreed, how would I vote?

Well, I have searched my conscience, and I have examined and re-examined the evidence, listened to the tapes, questioned the witnesses,



listened to my colleagues question the witnesses, subjected myself to the excellent briefs by the staff. I have tried to keep in mind the principles of the Constitution and due process. And I have made up my mind, and my decision is not going to bring me great joy. Mr. Nixon is a fellow Californian. He was a candidate for the Senate in 1950, and I was a supporter of his in 1950. There is an awful lot of personal and family tragedy involved in this whole thing. It is terribly unfortunate. So, there isn't anybody on this committee that is going to be delighted with his vote, if to impeach.

But I do believe, and this is the way I am going to vote, that the President has consciously and intentionally engaged in serious misdeeds, that he has corrupted and subverted our political and governmental processes to the extent that he should be impeached and the matter sent over to our sister body, the Senate, for trial to determine whether he is innocent or guilty.

A number of my colleagues on the committee, a majority I think, and I, are prepared to present in the next few days what we think is overwhelming evidence to support this conclusion. On my part I am willing to face my constituents, my family, myself, and history with this sober conclusion.

Thank you, Mr. Chairman.

The CHAIRMAN. I recognize the gentleman from Illinois, Mr. Railsback, for purposes of debate only, not to exceed 15 minutes. Mr. Railsback.

#### STATEMENT OF HON. TOM RAILSBACK, A REPRESENTATIVE IN CONGRESS FROM THE 19TH CONGRESSIONAL DISTRICT OF THE STATE OF ILLINOIS

Mr. RAILSBACK. Mr. Chairman, thank you. And members of the committee, let me begin by saying that you, Mr. Chairman, I think in a rather difficult assignment and although I have not agreed with you as you know, on many occasions, I think that you have handled yourself very well. And I think I can say for most members of the committee that during these 6 months and 7 weeks of looking through the 38 volumes of evidence, or listening to the live witnesses, morning, afternoon and night, that I can be proud of my Judiciary colleagues, most of them. I feel badly, as Charlie Sandman did, about the leaks, the selective leaks, some of which I think the newspaper made a mistake in playing, although I know they have a job to get the news.

Let me say, Mr. Chairman, that I used to like to be on the House Judiciary Committee when we were worried about penal reform and juvenile delinquency, trying to improve some very important things in our country that needed improving. But, I am about to reconsider my assignment now that we have had amnesty, abortion, impeachment and now a bomb threat.

Let me say that I am one of those that have agonized over this particular inquiry. I think it would be difficult for me, frankly, to consider impeaching a Democratic President. I regard it as an awesome responsibility, one that I do not relish at all, one that is particularly difficult for me because we are considering a man, Richard Nixon, who has twice been in my district campaigning for me, that I regard as a

friend, that he only treated me kindly whenever I had occasion to be with him.

I am not one of those that would try to demean or derogate his record. In my opinion, Richard Nixon has done many wonderful things for this country, particularly in the field of foreign affairs, and someday the historians are going to recognize the contributions that he has made.

Let me say that I have been asked by members of the press whether my arm has been twisted because I am one of the six or seven Republicans that have been undecided. And I can answer that with an unequivocal no, that the Republican National Chairman, George Bush, in my opinion, is one of the most decent and honorable men and one of the great national chairmen of the party. John Rhodes, who is the Republican leader of the House, has treated me only decently, honestly. Sometimes we have had differences of opinion, and I can say the same thing about my colleagues on this committee. And the gentleman who sits on my left, who I regard as one of my best friends, except on the golf course, who happens to disagree with my views on this particular important matter.

Let me say our job, as I view it, is to try to push aside partisan considerations, to try to be fair, to try to be judicious, to try to see that the President is afforded the same opportunities that have been afforded to other respondents in recent impeachment cases. There have been occasions when we have had substantial party divisions because some of us on the minority have not believed that the President has always been treated fairly procedurally. But I will tell you, the end result has been that the chairman, with some Democrats on the other side, has acquiesced and has usually ended up giving Mr. St. Clair the right to participate, the right to cross-examine, the right to call the witnesses that he wanted to call.

I have two serious areas of concern in respect to the allegations of misconduct that have been levied against the President. I will say unequivocally that I don't think a case has been made on the issue of the bribery charges on ITT or the bribery charges on the dairymen from the tape that I have heard, the evidence that I have heard. I disagree with my good friend, Henry Smith. I don't think that this President should be held to account for bombing in Cambodia when those of you who have read, "The Best and The Brightest," the book by David Halberstam, have read probably the greatest indictment of the two previous administrations about untruths, distortions, statistics that were not accurate.

But, I do have some problems that I want to share with my colleagues and I want to share with my constituents my concerns. They relate to what I would call abuse of power. I cannot think of an area where a conservative, or a moderate or a liberal, should be more concerned about the state of our Government.

On September 11, 1972, John Dean called the Commissioner of the Internal Revenue Service to his office, Commissioner Walters, where he submitted a so-called enemies list which were McGovern contributors and McGovern supporters and ordered the Commissioner to audit those people. The Commissioner didn't want to audit those people, resisted, said that he would have to check with Secretary Shultz.

On September 15, 1972, the President entered into a conversation with John Dean that began 27 minutes after 5 and lasted until 17 minutes after 6. We have a tape recording of that conversation up until 6 o'clock. The other 17-minute segment has not been produced according to a subpoena. It has been subpoenaed by Mr. Jaworski. Judge Sirica was requested by Mr. Jaworski, the Special Prosecutor, to again listen to that 17-minute segment to see if it perhaps might not be relevant. The judge, in his reconsideration, determined that 13 of the 17 minutes, were, indeed, relevant.

According to John Dean's testimony, which has not yet been released but will be released, you will learn, according to John Dean, and I think John Dean knows that that tape is going to be made public, that the President knew about this ordered audit, it was his impression that the President knew about it beforehand. The President made some derogatory remarks about Secretary Shultz and called him something like a candyass, he didn't send him over there to be a candyass, and John Dean was told to go back and if he needed any help to contact the President.

If there is anything that is going to affect adversely our democracy, our individual freedom, it is a misuse of a sensitive agency like the IRS, or the FBI or the CIA.

Let me just tell you a little bit about what concerns me about the Watergate coverup.

On August 29, 1972, the President held a news conference where he stated that he had had the Department of Justice, the FBI, and I think it was the GAO, and he referred to the Banking and Currency Committee and he said that he had directed his own counsel, John Dean, to investigate the Watergate matter to determine if there was any White House involvement. The truth of the matter is, as far as we know it anyway, that John Dean had never reported to him, had never been with the President. The White House logs show that John Dean's testimony is to the effect that he didn't even know about such a report until the President's press conference.

What was John Dean doing in the meantime? Well, for one thing on June 19 he was meeting with Mitchell, Magruder, and Mardian at which meeting Jeb Magruder was told by John Mitchell that he ought to have a fire to burn some documents, some incriminating evidence.

Then on June 23 after it was reported to them that there was some money involved that had perhaps been laundered in Mexico, money that had gone to CRP, what did they do?

And the President knew about this and said to get ahold of the CIA to determine if perhaps the CIA shouldn't influence the FBI not to pursue that because of covert activities. For a while the CIA agreed to that. They did make an investigation, they found there was absolutely nothing to hide. They went back, Dean still persisted in wanting them not to interview witnesses that were relevant.

What did they do on June 28? They established John Dean, and Ehrlichman, and Haldeman, and there is evidence that they established a fund, using the President's counsel, Kalmbach, to pay money. I don't care what that money was paid for. I don't care whether you call it hush money or it was for defendants. The evidence is that then

Pat Gray on July 6, the Director of the FBI, was so incensed that after a meeting with General Walters he first called Clark McGregor and then the President called him, and Pat Gray felt compelled to tell the President "Some of your top staff are mortally wounding you."

Then we go into the period after that. On September 15, the President finally did meet John Dean. On the 15th the President, after talking to Haldeman, congratulated him for plugging leaks and talked about containment and something to the effect of cutting losses or buttoning it up or something like that.

Then you go into the next period, March 21. Let me say that I don't think the President directed the payment of hush money, and I don't think, I don't think we can make that allegation. But, let me tell you what happened. Things were beginning to get a little hot and the President on March 20 ordered John Dean to conduct another report. This is the second Dean report. He said "That's right". This is the President speaking. "Try just something general like I have checked into this matter, I can categorically, based on my investigation, the following, Haldeman is not involved in this, that and the other thing. Mr. Colson did not do this. Mr. so and so did not do this. Mr. blank did not do this, right down the line, taking the more glaring things. If there are any further questions, please let me know."

The next morning John Dean advised the President that Ehrlichman was implicated, that Haldeman was implicated, that Magruder and Porter had perjured themselves, that John Dean himself was implicated.

What did the President do at that point? Well, that afternoon, I won't say what he said about the hush money, they talked about the million dollars, they talked about the \$120,000. "It is important we get that right away, isn't it?" John Dean says "It's important that we send a signal anyway." And so the President said "Well, for Christ's sake, get it."

Then there is another conversation, as my friend from New Jersey said, which kind of leaves that up in the air. But then later on, that afternoon, again the President referred to a report that he wanted Dean to write. Only this time the President had knowledge of who was allegedly involved, and he said this: "I don't want to get all that—I will say expletive deleted—specific. I am thinking now in far more general terms, having in mind the fact that the problem with a specific report is that this proves this one, and that one, and that one, and you just proved something you didn't do it at all. But, if you make it rather general in terms of my—your investigation indicates that this man did not do it, this man did not do it, this man did not do it," and so forth.

What happened after March 21? The President ordered John Dean to go to Camp David to make a report. John Dean could not make that report.

On September 5, the President had a press conference. This was after everything had kind of blown up. The President in his September 5 press conference went back to the John Dean report and said: "When it became apparent to me that John Dean couldn't make a report, I assigned it to John Ehrlichman." And this was March 27, I believe.

Now, what was the status of John Ehrlichman at that point? John Ehrlichman had already been implicated in the Watergate coverup himself by John Dean on the morning of March 21. John Ehrlichman denied that we had made any investigation at that point.

Then we have John Dean blowing the whistle by going to the U.S. attorneys on April 8 followed by Magruder on April 13, and then LaRue I think on April 16. Finally he said on April 14 that the jig was up. Silbert, the U.S. attorney, called Henry Petersen, the head of the Criminal Division and he said "Henry, we have broken the Watergate case."

Henry Petersen contacted Kleindienst. Finally, this began the mid-April meetings with Henry Petersen.

Now, what happened at those mid-April meetings with Henry Petersen?

On April 16, from 1:30 to 3:25 the President met with Henry Petersen. At this meeting the President promised to treat as confidential any information disclosed by Petersen to the President. The President emphasized to Petersen "You are talking only to me, and there is not going to be anybody else on the White House staff. In other words, I am acting counsel and everything else." The President suggested that, the only exception, might be Dick Moore. When Petersen expressed some reservations about the information, the President said "Let's just better keep it with me then."

In an afternoon conversation on that same day, a telephone conversation, when the President called Petersen again he said "Henry, feel free to confide in me, I can—I am going to in effect keep it confidential. I know the rules of the grand jury."

What did he do with the information that Henry Petersen gave to him? Henry Petersen was then taking the place of Kleindienst as really the chief investigator in the Watergate case. The President on April 17 met with Haldeman, who had been implicated again by information that was given to Henry Petersen, and which Henry Petersen had revealed to the President, and the President advised Haldeman at that point that he better get together with John and map out some kind of a strategy on the money.

Then there is a big deletion. I don't know what the material deleted is. Then the President comes back and says, "What about Kalmbach? Now, what is Kalmbach going to say about the money?" He says to Haldeman, "You better get ahold of Kalmbach and tell him that LaRue is speaking freely."

I am concerned about the President's actions, not so much, not about the break-in or what happened earlier.

The CHAIRMAN. The time of the gentleman has expired.

Mr. HUNGATE. Mr. Chairman.

The CHAIRMAN. I recognize the gentleman from Missouri for purposes of debate only.

Mr. HUNGATE. Mr. Chairman, I yield 2 minutes to my distinguished colleague and neighbor from Illinois, Mr. Railsback.

Mr. RAILSBACK. I thank the gentleman for yielding. Let me just try to finish very briefly.

It was shortly thereafter that, on April 24 and April 25 and I believe on April 26, that the President ordered Haldeman to listen to

certain tapes that I think only he and Haldeman knew had been made in the White House. Haldeman listened to tapes that were made in February and March. He reported to the President on April 26, and he spent I think it was 5 hours with the President.

We have subpoenaed that tape because we think it is relevant, and the subpoena had support from both Republicans and Democrats, and that is one of the tapes where Haldeman was reporting to the President after spending 2 days listening to these tapes which we do not have.

I just can't help but wonder, you know, when you put all of this together in that kind of perspective, I am concerned and I am seriously concerned. I hope that the President—I wish the President could do something to absolve himself. I wish he would come forward with the information that we have subpoenaed. I just am very, very concerned.

Let me just say one thing in the remaining minute. Some of my friends from Illinois—I received all kinds of mail; some of my people say that the country cannot afford to impeach a President. Let me say to these people, many of whom are good supporters and friends, I have spoken to countless others including many, many young people, and if the young people in this country think that we are not going to handle this thing fairly, if we are not going to really try to get to the truth, you are going to see the most frustrated people, the most turned-off people, the most disillusioned people, and it is going to make the period of LBJ in 1968, 1967, look tame. So I hope that we just keep our eye on trying to get to the truth. Thank you.

The CHAIRMAN. The time of the gentleman has expired, and I recognize the gentleman from Missouri for the rest of his 13 minutes for general debate only.

**STATEMENT OF HON. WILLIAM L. HUNGATE, A REPRESENTATIVE  
IN CONGRESS FROM THE NINTH CONGRESSIONAL DISTRICT OF  
THE STATE OF MISSOURI**

Mr. HUNGATE. I thank the chairman and I thank my distinguished colleague from Illinois for his discussion, and I hope that history will record received the clearest explanation of this problem on the time of the gentleman from Missouri. [Laughter.]

Mr. Chairman, it has been my privilege to serve on this committee for 10 years since I came to Congress, and never have I been prouder of this committee and of serving on it than I am during this period of its supreme testing.

For weeks, even months, we have studied evidence, heard witnesses, and debated the solemn question of impeachment. The time has come for decisions. Further delay is unjustifiable. The time-consuming task of impeachment must go forward.

Should Richard M. Nixon be found guilty of obstruction of justice? Yes.

Should Richard M. Nixon be found guilty of abusing the powers of his office? Yes.

Should Richard M. Nixon be found guilty of contempt and defiance of the Congress and the courts? Yes.

And on the last charge he is a repeated offender.

We hear a great deal today about the presumably grim consequences of impeachment—an endless public trial, a people divided, a Government paralyzed, a Nation disgraced. But suppose the House should decide not to impeach Mr. Nixon. This would have its consequences, too—and they deserve careful examination.

For the refusal to impeach would be a decision as momentous as impeachment itself. It would and could be interpreted only as meaning that Congress does not think Mr. Nixon has done anything to warrant impeachment. It would alter the historic relationship of Presidential power to the constitutional system of accountability for the use of that power. Our message to posterity would be that Mr. Nixon had conceived and established a new conception of Presidential accountability, and his successors can expect to inherit Mr. Nixon's conception of inherent Presidential authority and wield the unshared power with which he will have endowed the Presidency. Failure to impeach would be a vindication of a new theory of Presidential nonaccountability.

Many would shrink from this trying constitutional responsibility. Shrinking from impeachment probably arises from the remoteness of contemporary Presidents, and from the difficulty of visualizing the offenses of his administration. Perhaps the situation is more easily conceived if put in terms more homely and local. A letter of Robert P. Weeks in the Ann Arbor News did this well, I think, and I would like to paraphrase it.

1. Suppose your mayor approved a plan by which the chief of your city's police department would illegally tap your phone, open your mail, and burglarize your apartment, your office, or your house;

2. Suppose your mayor directed your hometown police and FBI agents to tap the phone of your local reporter covering city hall; directed the FBI to investigate a newscaster for the local radio and TV station;

3. Suppose your mayor withheld knowledge of a burglary from a local judge trying a case in which that knowledge was important;

4. Suppose your mayor secretly taped conversations held in his office in your city hall between himself and citizens like yourself as well as public officials, then when a confirmed court order required him to turn over nine of these tapes, refused to obey; then, reversed himself; then announced that two of the tapes containing perhaps the most critically important material did not exist;

5. Suppose your mayor tripled his wealth while serving as mayor;

6. Suppose your mayor paid practically no income taxes for several years because he claimed huge and legally dubious deductions for turning over his official papers to the local historical society;

7. Suppose your mayor surreptitiously used your city's taxpayers' funds to make major improvements on two private homes he had;

8. Suppose your mayor twice selected personally as mayor pro tem a man who had bribes delivered to him in city hall and then resigned, allegedly to avoid going to jail;

9. Suppose your mayor selected and supervised as trusted top officials of his administration 10 men who were indicted, convicted or pleaded guilty—including the city attorney.

The citizens of your town would not be complacent. "Should we hold our city's elected officials to one high standard of conduct but have a much lower, more lax standard for the President? \* \* \* Inaction would say to this President and future Presidents, 'There's practically no limit to the improprieties we'll put up with in the White House.'"

The Founding Fathers wisely made impeachment a constitutional remedy. They did not want to make it easy to get rid of Presidents but they were determined to make it possible. If we wish to restore the historic system of accountability of Presidents, the means are at hand and the time is at hand. If we do not hold Mr. Nixon and his successors accountable except once every 4 years, we license an imperial presidency, usher in a new and I believe ominous time for our Republic. We transform the balance and character of constitutional order. Impeachment may have grievous consequences. Refusal to impeach will have disastrous consequences.

The transcripts have diminished the President's image from that of a moral man surrounded by underlings who had betrayed him to that of an amoral man who compounded his troubles by withholding for more than a year the shocking truth about the mess he and his administration were in.

He shows a lack of concern for morality, a lack of concern for high principles, a lack of commitment to the high ideals of public office that make the transcripts a sickening exposure.

Richard Nixon is humorless to the point of being inhumane. He is devious. He is vacillating. He is profane. He is willing to be led. He displays dismaying gaps in knowledge. He is suspicious of his staff. His loyalty is minimal. His greatest concern is to create a record that will save himself and his administration. The high dedication to grand principles that Americans have a right to expect from a President is missing from the transcripts.

I do not know how one of sound mind can read the transcripts and continue to think that Mr. Nixon has upheld the standards and dignity of the Presidency which he proclaimed himself as a candidate in 1960, 1968, and 1972.

Involved here is not a question of Democrat or Republican, Liberal or Conservative, or of a conspiracy by his enemies to "get" the President.

In the words of an old senatorial friend and Presidential defender, Mr. Nixon took a principal role in a "shabby, immoral and disgusting performance."

This is a matter of right or wrong, telling the truth or not telling the truth.

Perhaps an old Missouri saying is appropriate, "If the Lord loved a liar, he'd hug him to death."

The issues here are broader than criminality.

An individual's conduct may be indefensible and reprehensible without being criminal.

Legal, constitutional, and parliamentary history show an official may be removed for failing to do his job, for bringing scandal and disgrace to his office, losing his ability to govern effectively. Mr. Sand-



man quoted James Madison. On May 19, 1789, in debate in the Congress concerning our Constitution, Mr. Madison said, "I think it absolutely necessary that the President should have the power of removing his subordinates from office. It will make him in a peculiar manner responsible for their conduct and subject him to impeachment himself if he suffers them to perpetuate with immunity high crimes or misdemeanors against the United States, or neglects to superintend their conduct so as to check their excesses."

It is true that this vagueness may tempt opponents to seek removal of a President for political or otherwise inadequate reasons, as some believe they did with Andrew Johnson. But that risk must be accepted. The ultimate arbiter in this matter must be the public, and the public reaction today is clearly one of revulsion. Republican politicians are defecting from Mr. Nixon in droves. The evidence against Mr. Nixon is, in his own words, made public at his own direction. There can no longer be a charge that he was railroaded out of office by vengeful Democrats or a hostile press. The fundamental questions have been answered. Filling in some gaps in the transcripts only makes the case against the President stronger.

Let us assume for a moment that you are President of the United States on March 21, 1973, and that you are possessed of normal standards of honesty.

One of your assistants comes into your office and says, in effect, "Mr. President, you remember the burglary at the Watergate? We are spending your campaign money to take care of the families of the men who were caught in that burglary, and to pay their legal fees."

What would you say and what would you do? Would you "examine all your options?" Would you say, "That would be perfectly legal," as Mr. Nixon has subsequently said of such payments?

Or would you say something like this:

"That money was raised to reelect the President of the United States. Nobody in this office is going to use it to support burglars. This is a case of the United States versus Burglars. Why are you using the office of the President to pay for legal advice and support to those whom the United States is prosecuting?"

And a man who is "not a crook" is not necessarily an honest man. We do not have to find Mr. Nixon guilty of a crime in order to find him dishonest.

Ask yourself again the question, "What would I have done if I had learned that funds given to me by people who believed in me and wished to secure my reelection were being used to support burglars?" Would I have said, "That would be perfectly legal" and kept quiet for 40 days?

Now ask yourself whether you think Richard Nixon is worthy to occupy the highest office and a gift of the people and it is their office. It is hard not to appear silly, you know, or dishonest when circumstances conspire to make you speak about the same subject from several opposing points of view.

So with President Nixon and Watergate. It is reasonable for a man who is trying to run a government to insist that "A year of Watergate is enough." It is reasonable for a man suspected of jailable offenses to do what he can to keep the prosecution from being able to prove what

it suspects. But when administrator and suspect are one, it is hard to say anything without the appearance of self-serving dishonesty.

As a result, Mr. Nixon is forever saying contradictory things—for instance, that he is cooperating fully with the committee and the Special Prosecutor, even while he is denying documents and tapes that the Prosecutor and this committee seek.

There is a way out. He could plead the fifth amendment. President Grant did during a congressional inquiry.

Add to this the privilege against self-incrimination, that a person is to be presumed innocent until proven guilty, and you've got about the best defense that he might have made.

Mr. Nixon said at Miami Beach, "It is time for some honest talk about the problem of order in the United States \* \* \*

"If we are to restore order and respect for law in this country there is one place to begin. We are going to have a new Attorney General of the United States." You know, one day we had three, one every 15 minutes.

Mr. Nixon said: "I pledge to you that our Attorney General will be directed to launch a war against organized crime in this Nation \* \* \*

"Government can pass laws. But respect for law can come only from people who take the law into their hearts and minds—and not into their hands."

Mr. Nixon said in 1968: "I believe in a system in which the appropriate cabinet officer gets credit for what goes right and the President takes the blame for what goes wrong."

Mr. Nixon said in 1968: "I believe that in any system of government that provides a method for peaceful change, there is no cause that justifies breaking the law or engaging in violence."

He said in 1973 on March 14: "The only way to attack crime in America is the way crime attacks our people—without pity."

Nixon said in 1971: "One final point: you talk about police state. Let me tell you what happens when you go to what is really a police state.

"You can't talk in your bedroom. You can't talk in your sitting room. You don't talk on the telephone. You don't talk in the bathroom. As a matter of fact, you hear about going out and talking in the garden. Yes, I have walked many times through gardens in various places where I had to talk about something confidential, and you can't talk even in front of a shrub. That is the way it works.

"What I am simply saying is this, my friends: There are police states. We don't want that to happen to America. But America is not a police state, and as long as I am in office, we are going to be sure that not the FBI or any other organization engages in any activity." It goes on.

On this committee we are all lawyers, and to become lawyers we took the same oath to uphold the Constitution which Richard M. Nixon took. To become Congressmen and Congresswomen, we took the same oath to uphold the Constitution which Richard M. Nixon took. If we are to be faithful to our oaths, we must find him faithless in his.

The CHAIRMAN. The time of the gentleman has expired and the committee will recess until 10 o'clock tomorrow morning.

[Whereupon, at 10:40 p.m., the committee was recessed, to reconvene on Thursday, July 25, 1974, at 10 a.m.]

## DEBATE ON ARTICLES OF IMPEACHMENT

### Business Session, Impeachment Inquiry

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THURSDAY, JULY 25, 1974

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The committee met, pursuant to notice, at 10:10 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti and Latta.

Impeachment Inquiry staff present: John Doar, special counsel; Samuel Garrison III, minority counsel; Albert E. Jenner, Jr., senior associate special counsel; Bernard Nussbaum, senior associate special counsel; and Richard Cates, senior associate special counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; Alan A. Parker, counsel; Daniel L. Cohen, counsel; William P. Dixon, counsel; Arden B. Schell, counsel; Franklin G. Polk, associate counsel; Thomas E. Mooney, associate counsel; Michael W. Bloomer, associate counsel.

The CHAIRMAN. The meeting will come to order. I recognize the gentleman from California, Mr. Wiggins, for purposes of general debate only, not to exceed a period of 15 minutes.

Mr. Wiggins.

#### STATEMENT OF HON. CHARLES E. WIGGINS, A REPRESENTATIVE IN CONGRESS FROM THE 25TH CONGRESSIONAL DISTRICT OF THE STATE OF CALIFORNIA

Mr. WIGGINS. Thank you, Mr. Chairman.

Ladies and gentlemen of the committee, Mr. Chairman, yesterday evening after we adjourned it was my privilege to listen once again to your remarks which were then being reported on television, the remarks you made opening this historic debate, and I want to commend you for them, Mr. Chairman, because they set the right tone for these proceedings. You emphasized the importance of the law and that it must be in the nature of things the basis upon which this controversy is resolved.

I cannot express adequately the depth of my feeling that this case must be decided according to the law, and on no other basis. The law, you see, establishes a common metric for judging human behavior. It eliminates irrelevant subjective concerns. Under the law we cannot be concerned with alleged Presidential improprieties because that is subjective. We really cannot be concerned about the judgment of the President at any given moment of time unless that falls below the standard imposed by the law. If we were, ladies and gentlemen, to decide this case on any other basis than the law, and the evidence applicable thereto, it occurs to me, my colleagues, that we would be doing a greater violence to the Constitution than any misconduct alleged to Richard Nixon. We have taken an oath ourselves and as we reflect upon the alleged misdeeds of the President and his constitutional responsibilities, let us not for one moment be unmindful of our own constitutional oath, and that is to decide this case according to the law, the evidence, and the Constitution as we understand its meaning.

In the context of the law, Mr. Chairman, personalities become irrelevant. I am sure we all agree with that. Recently I found myself cast in the role of the President's defender. This morning I heard on television that I was his chief defender. Frankly, I wince when I am characterized thusly and because that does not reflect at all my conviction. I count myself as a friend of the President and I am proud of that friendship and I cherish it, but that friendship is not going to deter me one whit from doing what is right in this case according to the law and I would hope that my colleagues share that conviction.

I am not going to attempt to state the law of this case in any great detail within the time allotted to me now, but I think that it probably can be characterized in one word, fairness. Fairness is the fundamental law of these proceedings. We would be doing violence to that fundamental principle, it seems to me, if we approach these proceedings with any preconceived notions of the guilt of the President. Of course, he is entitled to a presumption of innocence. Of course, he is. It is not too late for me to challenge my colleagues, not as a matter of law but an exercise of your own conscience, to question whether you should sit in these deliberations if you have formed a preconceived notion of the guilt of Mr. Nixon. I do not expect anyone to rise to that challenge, but it would certainly gnaw on my conscience if I had a preconceived notion about his impeachability prior to the receipt of evidence in this case.

The law requires that we decide the case on the evidence. Nobody doubts that. On the evidence. It must trouble you, Mr. Doar, I am sure, as a possible assistant to managers in the Senate, to consider the evidence as distinguished from the material which we have made—been made available before this committee. Thirty-eight books of material. My guess, Mr. Doar, you can put all of the admissible evidence in half of one book. Most of this is just material. It is not evidence and it may never surface in the Senate because it is not admissible evidence.

Simple theories, of course, are inadequate. That is not evidence. A supposition, however persuasive, is not evidence. A bare possibility that something might have happened is not evidence.

We are told that the standard must be that the evidence is clear and convincing, clear and convincing. Well, I will accept that for purposes

of argument because it must be at least that. It must be clear and not ambiguous. It must be convincing and not confused and jumbled by other facts. The force of that clear and convincing evidence must drive us to the conclusion unwillingly but drive us to the conclusion that Richard Nixon must be impeached for demonstrated and proved high crimes and misdemeanors.

Well, now, in the balance of my time, ladies and gentlemen, I want to discuss some of the evidence. A discussion of the evidence, I hope, is still relevant to these proceedings.

In referring to the evidence it is possible that I may overlook, that I may neglect some fact of importance to any individual Member, and I wish to assure you all that is not my intention. I want to lay it out as it is in toto so that we can test against this standard of clear and convincing evidence whether or not the charge is true.

I pick two issues, Mr. Chairman, because it is evident that some members here are concerned, and I share their concern, concerned about aspects of the case, and I want to talk first about the charge that the CIA has been misused. That charge is couched in article I, subdivision 5 of the proposed articles in terms of an obstruction of justice and also couched in article II, subdivision 6, as an abuse of power.

Now, let me state what the charge is. It is contended by those who sponsor this Resolution that President Nixon personally, willfully, corruptly, falsely interjected the CIA into the FBI's investigation of the Watergate incident for the purpose of obstructing justice. Now, that is the charge. That charge has to be supported by the evidence and bear with me and let me tell you what the evidence is in support of that charge.

It all begins on the afternoon of June 23, 1972, in a meeting in the Oval Office at about 1:10 p.m. Present were two people only, the President and Mr. Haldeman. The discussion involved the CIA.

First, let us look at what facts were then known to the President and then known to Mr. Haldeman at the time of that discussion.

The President knew that one of the persons arrested in the Democratic National Committee Headquarters on the night of June 17 was a Mr. McCord, a former CIA agent. The President knew that one of the arrestees was a Mr. Barker, an active CIA agent until recently before this incident and perhaps still on retainer with the CIA. The President knew that one of the arrestees was a Mr. Martinez, an active CIA agent. At this time, on June 23, the name of Hunt had surfaced across the headlines in this town and his potential involvement was known to the President. Who was Hunt? Well, Hunt characterized himself before the Senate select committee as a spy for the United States, a former CIA agent and a person known then to the President to have been involved in highly classified national security work as a member of the special investigating unit, otherwise known as the plumbers.

Haldeman knew, and I think it is possible that the President knew, that the automobile of Martinez had been searched by CIA personnel on the 21st prior to this meeting on the 23d and in the trunk of that automobile was found material compromising of the CIA. In addition, the President knew or Haldeman knew that Hunt was an employee of Mullen & Co. Mullen & Co. was then a CIA front. The President knew also that the FBI had suggested to John Dean that possible CIA involvement was one of the theories of this case which they were then

considering. In addition to that, there is reference by the 23d of something that we know more about now called Mexican checks. What they were precisely was perhaps unknown exactly at 1:10 p.m. on the 23d, but Mexican checks in the context of former CIA agent was known to the President. And finally, Haldeman has testified that Mr. Dean had come to him prior to the meeting on the 23d and said that Mr. Gray, the Director of the FBI, had asked for guidance because of the possibility of CIA involvement in this case.

Now, given those facts on the table, what did the President do? And it is the Presidential actions which form the basis of this allegation. Only two people present, the President and Mr. Haldeman and Mr. Ehrlichman to insure that the FBI investigation of the Watergate did not expose unrelated CIA covert activities or the activities of the special—the White House Special Investigating Unit, and that there was required to be a level of coordination between the CIA and the FBI.

Now, ladies and gentlemen, that was the President's involvement in this matter. The President's involvement ends there with those instructions and I think it is not unreasonable to characterize the President's order, given the facts known to him at the time he issued the order, to be wholly responsible and wholly reasonable, and inconsistent with the notion that it was motivated by a corrupt desire to obstruct justice.

The story does not quite end there, ladies and gentlemen. There were misdeeds performed in my opinion, by Ehrlichman and by Dean, with respect to the CIA immediately following a period following the instructions given by the President to which I referred. The CIA, you know, from the evidence, was confused as to whether or not it was in fact involved. There was a hiatus of about 2 weeks in which memorandums were going back and forth between the CIA and the FBI attempting to resolve the question of CIA involvement. During this period of time, John Dean did something wrong in my opinion, and Ehrlichman did something wrong. One of them requested that the CIA provide bail money for these defendants and they were promptly rebuffed, of course, by the CIA. But that was a wrongful act. There is not a word, not a word, ladies and gentlemen, of Presidential knowledge of awareness or involvement in that wrongful act.

In addition to that, and I want to run ahead here because I have other matters to discuss, and I am going to treat with some of these rather casually, although they are important facts, it is true that Ehrlichman ordered a cancellation of a meeting between Gray and Helms.

I am going to interrupt just to find out what this means when it says "time." Am I through?

The CHAIRMAN. Your time has expired. I will allow the gentleman—

Mr. WIGGINS. Will you allow me to complete my sentence?

The CHAIRMAN. Absolutely.

Mr. WIGGINS. My sentence is not going to relate to the CIA. I will at some subsequent time talk to my colleagues with respect to the evidence involving alleged IRS abuse but I do ask you to judge the

CIA involvement on the basis of the evidence and test it against the standard of clear and convincing proof which is the law of this case.

Thank you, Mr. Chairman.

The CHAIRMAN. I recognize the gentleman from Michigan, Mr. Conyers, for purposes of general debate only, for a period not to exceed 15 minutes.

**STATEMENT OF HON. JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE FIRST CONGRESSIONAL DISTRICT OF THE STATE OF MICHIGAN**

Mr. CONYERS. Thank you, Mr. Chairman, and my fellow colleagues on the Judiciary.

The search for what we individually regard as truth in a matter so momentous as this is always most difficult, and so as we proceed here, we are in effect expounding the Constitution as one early juror said, giving it life and meaning and in the process we are also necessarily reviewing what kind of leaders we are. I suppose finally, we are determining what kind of government this Nation is going to have.

Now, in all candor, I know that it is easier for some of us to discharge this onerous burden presented to us than it is for others, but we should be mindful that as we reach these judgments, we, too, must be judged by our fellow citizens today and for all time by history.

Certainly, no one can accuse us of having rushed to judgment. This marks the third consecutive year that resolutions of impeachment have been filed against the President of the United States. I suppose that we should admit that we sit here not because we want to but because we have to, and we have to because for the first time in the history of this country, millions of citizens are genuinely afraid that they may have in office a person who might entertain the notion of taking over the Government of this country, a politician who has more effectively employed the politics of fear and division than any other in our time.

It is imperative, then, that we not only impeach the President but make it as clear to as many of our citizens as we can why this impeachment is so necessary.

It is my view the reason we must now consider to vote and to impeach Richard Nixon goes far beyond the scope of the resolution of impeachment before you and what I would like to do here is describe from my view the backdrop against which the complaint against the President now requires us to vote out this limited narrowly drawn bill of impeachment.

Richard Nixon, like the President before him, is in a real sense a casualty of the Vietnam war, a war which I am ashamed to say was never declared. Since these hearings began on May 9 we have had a professional staff of some 89 men and women gather in great detail over 42 volumes of information that was considered throughout some 57 sessions. The study of the 42 volumes of carefully compiled documents and papers and testimony revealed clearly the pressures of

an administration so trapped by its own war policies and the desire to stay in office it was forced to enter into an almost unending series of plans for spying and burglary and wiretapping inside this country and against its own citizens without precedent in American history.

The President took the power of his office and under the guise of protecting and executing the laws that he swore to uphold, he abused them and in so doing he has jeopardized the strength and integrity of the Constitution and laws of the land and the protections that they ought to afford all of the people. This is why we must exercise this awesome power of impeachment, not to punish Richard Nixon, because the constitutional remedy is not punitive, but to restore to our Government the proper balance of constitutional power and serve notice on all future Presidents that such abuse of conduct will not now or ever again be tolerated.

I would like to turn back to 1969 when the war was still going on and the President was confronted with the option of attempting to bomb through infiltration routes the pass in the Far East through at least two independent sovereign nations, Laos and Cambodia, and when that decision was made to bomb Cambodia, on May 9, 1969, or shortly thereafter, William Beecher, the Pentagon correspondent for the New York Times, published a story that ran a headline that said "American B-52 bombers in recent weeks have raided several Vietcong and North Vietnamese supply dumps in Cambodia for the first time," and that story triggered off the beginning wiretaps because shortly thereafter the administration embarked upon a series of illegal surveillance and involving both members of the press and of the Government that were unparalleled.

It was more than just a wiretapping between friends and government but it was the beginning of a policy of corruption that started then and spread to three different levels because it embraced, first of all, a decision not to entrust to the American people the true and difficult nature of the war policy that this administration had embarked upon. And second, it was so caught up with that policy that it was ready to deceive the elected representatives of the Congress on what we were doing and what we were supposedly voting money for. And third, and logically, the outcome of the first two, is that the administration finally could not even trust themselves. And so we are confronted with the record of friends tapping friends and of paranoia that shows even no trace of conscience.

And so this secret war in Cambodia which seemed at first incidental, as I studied the record before us, has to me begun to be the string around which we can understand the tremendous amount of surveillance and spying and burglary that has characterized the evidence, and I consider that to be evidence now, that is before us.

Witness the deception that the President practiced on the Congress and the American people when from May 17, 1969, he approved a secret bombing campaign personally that as a result caused more than 150,000 air strikes to take place and more than 500,000 tons of bombs dropped upon a neutral nation. And yet, 2 months after that date in which he had personally authorized this conduct, the President said: "I have tried to present the facts about Vietnam with complete honesty and I shall continue to do so."



In a news conference 6 months later he stated that the people of the United States were entitled to know everything they could with regard to any involvement of the United States abroad. A year after the bombing began he declared, "We respect Cambodia's neutrality and we hope that whatever government prevails, they will recognize that the United States' interest is in the protection of its neutrality."

And so, my friends, it seems to me that that marked the beginning of the intelligence-gathering activity which under his direction or on his authority is unparalleled. These activities involved widespread and repeated abuses of power and illegal and improper activities by the executive agencies and, of course, wholesale violations of the constitutional rights of citizens.

Now, I would like to turn to another very important area of our considerations that deals with his present noncompliance. But I want to make it clear that in no way am I, by not mentioning the fact that there was an attempt to bargain with a Federal judge, that there has been willful—there has been evidence of willful and purposeful evasion of the Federal income tax laws, that there has been an unconstitutional impoundment in my judgment, of an accumulated number of programs of over \$40 billion, that the bargainings and negotiations by which the contributions were made in terms of ITT and the milk producers, I think those are all serious matters that have been clearly proven, but there must be recognized that to this day, the President is in open and notorious defiance of the law because he has failed to comply with the directives of this committee to produce the documents that we needed to pursue our inquiry. And I hope that we elevate to a separate article, my friends on this committee, that provision which says that the President in my judgment, stands the very grave possibility of subverting the impeachment provision in the Constitution for all time if we fail here to not impeach him for that obstruction.

He has turned over only a comparatively negligible amount of evidence and he has announced to the American people that we in effect, must be satisfied to abide by his judgment regarding the relevance and materiality of evidence in an inquiry that only this Congress has the power to conduct. And so it is my deep hope that these deliberations will unite and show to the American people that the Congress is capable of discharging its responsibility and that from this point forward we can make America the dream that is in most of our hearts.

Thank you, Mr. Chairman.

The CHAIRMAN. I recognize the gentleman from Indiana, Mr. Dennis, for purposes of debate only for a period not to exceed 15 minutes.

#### STATEMENT OF HON. DAVID W. DENNIS, A REPRESENTATIVE IN CONGRESS FROM THE 10TH CONGRESSIONAL DISTRICT OF THE STATE OF INDIANA

Mr. DENNIS. Mr. Chairman and my colleagues of the committee, all of us are agreed that this is the most important vote any one of us is likely to ever cast as a Member of the Congress. Only a vote on a declaration of war I suppose might be considered as of equal gravity.

All of us I think would like this vote to be right, to do right, and to be recorded as having been right in the long light of history.

This is an emotional matter we have before us, loaded with political overtones, and replete with both individual and national tragedy. Yes, I suggest that we will judge it best and most fairly if we approach it dispassionately and analyze it professionally as lawyers who are engaged in the preparation and in the assessment of a case. In doing this, of course, we cannot approach or decide this important matter on the basis of whether we like or dislike President Nixon, whether we do or do not in general support his policies. The question rather is whether or not proof exists, convincing proof of adequate weight and evidentiary competence to establish that the President of the United States has been guilty of high crimes and misdemeanors within the meaning of the Constitution so as to justify the radical action of his impeachment and removal and disgrace from the high office which he was elected by the American people.

It is my understanding that the principal charges against the President with which we have to deal are divided into three general categories, and it is to these that I shall chiefly address my remarks in the brief time allotted. These general categories are first, the obstruction of justice and the so-called Watergate coverup. Second, the alleged abuse of executive power, and third, which may be included within the abuse of power category, the failure of the President to comply with the subpoenas of this committee.

It is my judgment that only the first of these categories, the so-called Watergate coverup, presents us with any really serious problems for our decision. I shall, therefore, address myself to the second and third categories, alleged abuse of power and noncompliance with the subpoenas in the first instance and rather briefly, and shall use the balance of my time in a slightly more extensive analysis of the alleged Watergate coverup, following thereafter with my conclusions as to the merits of the case.

Turning first to the matter of the failure to comply with the subpoenas of the Committee on the Judiciary, we have, of course, had a landmark decision of the Supreme Court of the United States just yesterday which has decided for the first time that a generalized and unlimited executive privilege cannot be exercised to override specific subpoenas issued by a special prosecuting attorney in the furtherance of a criminal case.

This decision does not bear directly on, nor, as a matter of fact of law does it enhance the power of this committee to issue subpoenas in these impeachment proceedings, because very unfortunately, as I believe, this committee has declined and refused to test and determine its constitutional powers in the courts of this country, despite the well known statement of Chief Justice Marshall in *Marberry* against *Madison*, that it is emphatically the province and duty of the Judicial Department to say what the law is.

I believe, however, that the power of this committee in respect to the issuance of subpoenas is at least equal to and in all probability superior to the power of the Special Prosecutor. This decision, therefore, although we are not a party to the litigation, and derive no actual right therefrom, very well may, in my judgment in all probability will result

in the furnishing to this committee of additional relevant and highly material evidence which we do not now have.

It is my judgment that should it appear that such evidence will be available to us within a reasonably short period of time, then it will become our positive duty to delay a final vote until we have examined this additional evidence.

In assessing the President's past treatment of subpoenas of this committee, however, we have no right whatever to consider yesterday's decision of the Supreme Court, because in addition to the fact that we are not a party to it this decision had not been handed down when our subpoenas were served. At that point the President simply asserted what he stoutly claimed to be a constitutional right, and which he is, in fact, still legally free to assert to be a constitutional right so far as this committee is concerned, and we on the contrary assert a constitutional right in opposition to the Presidential claim. Such a conflict is properly one for resolution by the courts, and absent a binding and definitive decision between the parties by the judicial branch, it escapes me on what grounds it can properly be asserted that a claim of constitutional right is in any sense an abuse of power.

Turning to further alleged abuses of power, I look to the proposed articles which we have before us. In proposed article II, these abuses of power are alleged to be first illegal surveillance. But, the 17 wiretaps which are chiefly complained of under this heading were all instituted before the *Keith* decision, and were not only presumptively legal at that time, but are probably legal in large part today, since many if not all of them had international aspects, a situation in which the need for a court order was specifically not passed upon in the *Keith* decision.

Second, use of the executive power to unlawfully establish a special investigating unit to engage in unlawful covert activities. But, it was not unlawful so far as I am advised to establish the plumbers unit, and I suggest that proof is lacking that the President intended for it to engage in unlawful, covert activities.

And in like manner, it is certainly not established as a fact that the purpose of the Fielding burglary was, quoting the charge, "To obtain information to be used by Richard Nixon in public defamation of Daniel Ellsberg," nor is there any substantial evidence that the President knew of or authorized this break-in before it took place. In fact, when told by Dean about it on the morning of March 17, the President said, "What in the world—what in the name of God was Ehrlichman—this is the first I ever heard of this."

Third, alleged abuse of the IRS. Without going into detail, I suggest that the evidence here so far as the President is concerned is one of talk only and not of action, that the independent attempted actions of Dean, Haldeman, and Ehrlichman were unsuccessful and ineffective, and that the only direct evidence of an alleged Presidential order in the *Wallace* case is a hearsay statement by Clark Mollenhoff that Mr. Haldeman said to him that the President requested him to obtain a report which, of course, is not competent proof of anything.

Turning to other alleged allegations of obstruction of justice, the first one we have in the proposed articles of specific action is implementing the President's alleged policy in the making false and mis-

leading statements to lawfully authorized investigative officers. It would be interesting to have the authors of this allegation particularly plead and prove to whom and when the President was guilty of making such false statements, and it would be relevant to inquire whether these false statements, if any, were, in fact, made to an investigative officer when and while he was engaged in his investigative function.

If the President was guilty of counseling witnesses to give false statements, again, some specificity in pleading and proof are much to be desired. I do recall that he had everybody go up to the Senate and testify without immunity, and that he counseled John Dean, not very effectively it would appear, to always tell the truth, pointing out that Alger Hiss would never had gone to jail if he had done so.

Whether the President had a design to interfere with or obstruct the Watergate investigation conducted by the FBI and by a phony attempt to enlist the possibility of CIA involvement, or whether he genuinely believed, due to the personnel concerned, the Mexican connection and other circumstances that there might well be a CIA or a national security involvement, appears to me to be a debatable proposition, and in any case, the CIA disavowed involvement, and any delay caused by this episode was for a few days only.

I predict that the allegations respecting the alleged corrupt offers or suggestions of executive clemency will on the record of our hearings to date fall far short of proof. And I believe that the testimony before us of Henry Petersen himself very adequately answers the allegation of wrongfully disseminating information received from the Department of Justice to subjects of the investigation.

The matter of the payment to E. Howard Hunt of \$75,000, apparently on the evening of March 21, 1973, is probably the most dangerous single incident insofar as the President is concerned, because there is no doubt that in the conversation of March 21 the President more than once stated, and in dramatic fashion, that in order to buy time in the short run, a payment to Hunt was apparently necessary. But, in the same conversation, the following exchange took place. The President said: "In the end we are going to be bled to death, and in the end it is going to come out anyway. Then you get the worst of both worlds. We are going to lose, and people are going to—". And Haldeman says, "And look like dopes."

And the President said, "And in effect look like a coverup, so that we can't do."

And John Dean told the Senators the money thing was left hanging, nothing was resolved.

More importantly, the March 21 payment to Hunt was the last in a long series of such payments engineered by Mitchell, Haldeman, Dean and Kalmbach, and later on LaRue, and all so far as appears without the President's knowledge or complicity. And as to the payment of March 21, the evidence appears to establish that it was set up and arranged for by conversations between Dean and LaRue, and LaRue and Mitchell before Dean talked to the President on the morning of March 21, so that even if the President was willing, and he ordered it as to which the proof falls far short, it would appear that this payment was in train and would have gone forward had Dean never talked to the President on March 21 at all.

And we need to remember in this connection that despite my repeated insistence and requests, this committee has never even bothered to call Howard Hunt, the chief figure in the alleged blackmail as a witness in the course of these proceedings, and where coverup is concerned, we ought to remember that after all the President became fully aware and took charge on March 21, and surely he was entitled to a few days to check the facts. And that by April 30, Haldeman, Ehrlichman, Kleindienst and Dean had all left the Government for good, and now are dealing as they should with the structures of the criminal law.

Time does not permit a further analysis of the evidence, but in conclusion I would like to leave with you a couple of thoughts. The first legal and finally a more general word.

First, if we bring this case and carry it through the House and into the Senate we will have to prove it. We will have to prove it by competent evidence. The managers on the part of the House will have to make the case. At that point, hearsay will not do, inference upon inference will not do. Ex parte affidavits will not do. Memoranda will not do. Prior recorded testimony and other legal proceedings to which the President was not a party will not serve. The witnesses never called in our investigation, and even never interviewed will have to be called and will have to be relied upon. Someone will have to present this case in the cold light of a judicial day.

And unless a legally provable case is clearly there, we ought not to attempt it, we ought not to bring on this trauma, this injustice to the President, in fairness to ourselves and in consideration of the welfare of the country. Any prosecution is going to divide this country. It will tear asunder the Republican party for many years to come, and this is bad for the country which demands for its political health a strong two-party system. And impeachment is radical surgery on the tip of the cancer which needs therapy at the roots. I am as shocked as anyone by the misdeeds of Watergate. Richard Nixon has much to answer for, and he has even more to answer for to me as a conservative Republican than he does to my liberal friends on the other side of the aisle.

But, I join in no political lynching where hard proof fails as to this President or any other President. And I suggest this: What is needed is moral and political reform in America. The Nixon administration is not the first to be guilty of shoddy practices, which have not established as ground for impeachment, are nonetheless inconsistent with the better spirit of America. Neither the catharsis of impeachment nor the trauma of political trial will cure this illness of spirit. We are all too likely to pass through this crisis and then forget reform for another 20 years.

Our business in the Congress is basically legislative, and not judicial, lacking as we do a clear and convincing legal case, which all reasonable Americans must and will accept. We would do better to retain the President, we in our judgment elected to office, for the balance of his term, and in the meantime place our energies and spend our time on such pressing matters as a real campaign reform, a sound financial policy to control inflation, energy and the environment, war and peace, honesty throughout Government, and the personal and

economic rights and liberties of the individual citizen as against private agglomerations of power in the monolithic state.

The CHAIRMAN. The time of the gentleman has expired.

Mr. DENNIS. There will be another election in 1976, and we can enter our 200th year better by preserving our rights until that time, and not trying to purge our sins by the persecution of an imperfect President who probably represents us both in his strength and his weakness all too well.

The CHAIRMAN. I recognize the gentleman from Pennsylvania, Mr. Eilberg, for purposes of general debate only, and not to exceed 15 minutes. Mr. Eilberg.

**STATEMENT OF HON. JOSHUA EILBERG, A REPRESENTATIVE IN CONGRESS FROM THE FOURTH CONGRESSIONAL DISTRICT OF THE STATE OF PENNSYLVANIA**

Mr. EILBERG. Mr. Chairman, this committee and its staff have labored steadily for more than 6 months on the question of the possible impeachment of Richard M. Nixon.

During that time we have reviewed a huge amount of evidence, questioned witnesses, search for precedents in previous impeachments, and for guidance from contemporary legal scholars, previous occupants of the Oval Office, and the authors of the Constitution. The evidence is clear and overwhelming.

Richard Nixon is guilty beyond any reasonable doubt of numerous acts of impeachable conduct, regardless of any standard we apply. He has violated his oath of office as set down in article 2, section 1, paragraph 7, to: "Preserve, protect, and defend the Constitution of the United States."

He has also violated article 2, section 3, to "take care that the laws be faithfully executed;" article 2, section 1, paragraph 6, that the President shall not receive, "any other emolument from the United States," other than the salary and expenses set by law, and, it is article 1, section 2, paragraph 5, which gives the House of Representatives, "the sole power of impeachment."

What we are faced with is a gross disregard for the Constitution and the very safeguards in it which the framers hoped would prevent the President from becoming a king or dictator.

The evidence presented during our hearings portrays a man who believes he is above the law and who is surrounded by advisers who believe they owe their allegiance to him and not to their country or the Constitution. For this reason they were only too willing to carry out his orders and directions no matter what the cost to other individuals or groups or the Nation.

As a result of this atmosphere in the White House, a conspiracy—which is still going on—was organized to obstruct justice. Every possible power of the Presidency was used by Mr. Nixon to hide the fact of the existence of the so-called plumbers and their activities. He ordered his assistants to commit perjury and praised them when they did. He ordered every attempt to be made to frustrate the activities of the law enforcement agencies investigating the Watergate break-in.

Mr. Nixon tried to use his power as President to get the CIA to lie about its connection with the case. He also used his power to get the CIA to assist his gang of burglars in their illegal activities.

Perhaps the most horrendous of these acts was Mr. Nixon's permitting his candidate for Attorney General, the Nation's chief law enforcement officer, to testify falsely at his own confirmation hearings before the Senate.

Mr. Nixon is also involved in three instances of bribery. He accepted funds through his political organization from the dairy industry in return for Presidential favors. He ordered the payment of \$75,000 to Howard Hunt to buy his silence on the activities of the "plumbers." Finally, he attempted to influence Judge Byrne's rulings in the Ellsberg trial by offering him the directorship of the FBI.

Additionally, Mr. Nixon has ruled that he is a law unto himself by refusing to turn over to this committee all of the material it has either requested or demanded by subpoena. This decision by Mr. Nixon is an arrogant violation of the Constitution which places the sole power of impeachment in the House of Representatives. Nowhere else in the Constitution or in the thousands of laws passed by the Congress is there any limitation on this power.

Mr. Nixon's claim of executive privilege has no basis in law or historical precedent. No contemporary legal scholar has claimed that executive privilege can be applied in an impeachment investigation.

His own lawyer has filed no brief on this issue. He simply stated Mr. Nixon's claim in a letter to the committee, but he has never justified it with legal arguments or precedents.

As I stated before there is no historical basis for such a claim. In the one previous Presidential impeachment there was total cooperation by the President and his aides. In fact, President Andrew Johnson even allowed the impeachment committee to look through his personal financial records and bank accounts.

In the past other Presidents have refused to give Congress information it has requested, but the record is clear and unanimous on impeachment. All previous Presidents have agreed that nothing can be withheld from an impeachment investigation.

President James Polk wrote:

It may be alleged that the power of impeachment belongs to the House of Representatives, and that, with a view to the exercise of this power, that House has the right to investigate the conduct of all public officers under the Government.

This is cheerfully admitted.

In such a case the safety of the Republic would be the supreme law, and the power of the House in pursuit of this object would penetrate into the most secret recesses, of the executive departments.

It could command the attendance of any and every agent of the Government, and compel them to produce all papers, public or private, official or unofficial, and to testify on oath to all facts within their knowledge.

When this attitude is compared to stonewalling, edited transcripts and notes, tape gaps, and executive privilege, it is clear that Mr. Nixon is not thinking along the same lines as his predecessors, who had nothing to hide.

Mr. Nixon has stated in effect, "You cannot do anything but impeach me, but I am not going to give you the evidence to help you decide whether or not I should be impeached."

If he is permitted to get away with this ridiculous and arrogant argument, the power of impeachment may just as well be cut out of the Constitution, for the House will have no power to enforce it, and the power of future Presidents will have no bounds.

Fortunately, the ruling yesterday of the Supreme Court has made it clear that Mr. Nixon does not have a power to withhold information on the absolute claim of executive privilege. If the President is required by law to turn over information he has refused to release under a claim of executive privilege for the criminal trial of Messrs. Mitchell and others, then certainly the demands of the grand inquest of the Nation must be all powerful.

All of the offenses I have listed could come under the headings of bribery or high crimes. Where this leaves tax fraud and the pilfering of Federal funds to turn Mr. Nixon's homes into palatial mansions I do not know, but I believe we must consider their effect on the Nation.

Mr. Nixon's actions and attitudes and those of his subordinates have brought us to the verge of collapse as a Nation of people who believe in its institutions and themselves. Our people have become cynical instead of skeptical. They are beginning to believe in greater numbers that one must look out only for himself and not worry about others.

At the same time we are becoming a people afraid to take a stand. Our citizens are afraid that if they take a position on a political issue their telephones will be tapped, their mail opened, and their tax returns audited as a means of punishment.

This result makes it imperative that Richard Nixon be impeached. It has been argued that Mr. Nixon should not be impeached, even if the evidence shows he is guilty if the national interest would not be served by his removal from office.

Mr. Chairman, it is my deep belief that not only is Richard Nixon guilty of bribery, high crimes, and misdemeanors, but he must be impeached and convicted by the Senate if we are to remain a free, courageous, and independent people.

Thank you, Mr. Chairman.

The CHAIRMAN. I recognize the gentleman from New York, Mr. Fish, for purposes of general debate only, not to exceed 15 minutes.

**STATEMENT OF HON. HAMILTON FISH, JR., A REPRESENTATIVE IN CONGRESS FROM THE 25TH CONGRESSIONAL DISTRICT OF THE STATE OF NEW YORK**

Mr. FISH. Thank you, Mr. Chairman.

I would like to congratulate you, Mr. Chairman, for your fairness throughout the past 7 months of this investigation and inquiry. I am most mindful as I believe many of us here are that we literally started out from scratch, that there were thousands of procedural and legal questions to be determined, largely by you, at the outset of our inquiry.

I feel it was infinitely wise that at the very outset the chairman decided on a special inquiry staff. I have said before that the team of 40 some lawyers assembled and assigned to conduct this inquiry perhaps make up the finest law firm in the United States.

One of the most worthwhile events in the early consideration of the applicable law and procedure has been that John Doar and Albert



Jenner spoke to us with one voice, bringing to bear their great legal talents on the complex issues that the committee faced. Through these months of hearings in which we have heard thousands of words, a memorable statement was made by Mr. Jenner which is a tribute to this committee and to the orderly processes of government under our Constitution. He said that "No matter which way you ladies and gentlemen of the committee vote, the institution of the Presidency will have been preserved." And I thank you for that, Mr. Jenner.

During this investigation each member has had available to him hundreds of pages of precedents. We have had the opportunity to read the debate of the Constitutional Convention. We have been briefed by our staff and by counsel for the President on what constitutes an impeachable offense. We have also received briefs from law schools from across this Nation.

To appreciate the standard this member will bring to bear I should like to state that my test of an impeachable offense must have three elements.

First, that the offense must be extremely serious. Second, that it must be an offense against the political process or the constitutional system of our country. Third, that it is one that is recognized as such by the broad majority of the citizens of this country.

I think also that every member has a right to consider what is best for the United States and its people, for it is our great institutions and the people that the constitutional provision regarding impeachment is designed to protect.

Yet, in applying a test of what is best for our country, it would do damage to the Constitution and the law if we through a show of judicious deliberation, yet with partisan intent, avoid an impeachment deemed warranted, or through partisan anger, mask a drive to remove a sitting President from office if such a removal is not warranted by the evidence.

I respect that a member may consider as well the trauma that impeachment will visit on this Nation. I also maintain that a member may just as well consider the implications of countenancing Watergate behavior.

The evidence itself certainly must be clear and clear to the ultimate jury and this is simply because it is the President of all the people whose fate we deliberate.

What exactly are the constitutional duties of the President? When a President assumes office, he is required by the Constitution to take an oath of office in which he vows to "faithfully execute the Office of President." He vows not only to perform the duties of the President but to perform those duties faithfully. But faithful to what or to whom?

I would suggest that a President is required to keep faith with the public trust that is placed in his position. The public welfare and interest must come first in his conduct of the office. The vigilance that is required of him is to protect and advance the interests of the people.

Thus, in considering the impeachment question before us, we must judge whether the faithfulness which has been sworn and avowed to by the President in his oath has been honored. And we must judge whether any lack of faithfulness which may have characterized the

performance of the President's duties is such a breach of trust as to warrant his removal.

A second duty that is required of a President is also contained in the oath of office. Each President must swear that "to the best of my ability [he will] preserve, protect, and defend the Constitution of the United States." A President is required to safeguard the Constitution to "the best" of his abilities.

In assuming office, the President affirms that he will safeguard the structures which comprise the essence of the Government and the values which comprise the very foundation of our society. It is his responsibility to exercise his powers to insure the liberties and constitutional rights of the people.

A third duty assigned to the President by the Constitution is that of faithful execution of the laws. The keynote as before, is faithfulness. This not only means that, like any ordinary citizen, the President must obey the laws, but it also underscores that the branch of Government which the President heads is relied upon to put into execution the laws themselves. In discharging these obligations, a President is expected to use all possible diligence in seeing that the laws are executed fully, fairly, and justly. He is responsible both for carrying out the enactments of Congress and for supervising the thorough and impartial administration of justice.

The individual who occupies the Office of President in this great land, therefore, serves as the protector of the people and to use a phrase from Jewish history, the guardian of that sacred vessel of the law, our Constitution.

Here the issue is the Constitution, and in assessing the fitness of the President to remain in office, the Congress becomes the conscience and protector of the state.

Many have been impressed with our long deliberation. I hope that all are aware of the gravity of this proceeding, the need for us to have been exhaustive, the demand that each of us on this committee bring to bear his very best.

Many around our Nation have communicated to us thoughtfully and provocatively. Others—on both sides of the question—have sought by plea or threat of political reprisal to have us shortcut or deny the express direction of the Constitution. These have been less helpful, for no member of this committee can, in conscience, shirk his oath of office to defend the Constitution of the United States.

I am a Republican. In these proceedings, I have attempted to discipline myself in partisan neutrality. The matter before us is clearly larger than party. It is more important than the continuation in office of any member of this committee.

What is best for America that is within our power to insure has not changed in our 200 year history. It is that the Constitution and the laws be enforced fairly, justly, and impartially. It is that our people know that the rule of law applies equally to those who govern as well as to the governed.

The question is raised by many, is anyone virtuous enough to decide the weighty issue before us? It is suggested that we, as politicians, are all too tainted with corruption or moral imperfection to decide on the sins of Watergate. Carried further, it is suggested that we are all really guilty; that civic unrighteousness is collective. If I were to ac-

cept this thesis, if I and my colleagues can no longer separate our sins from those of others, we are no longer capable of making any worthwhile judgments whatsoever.

At the outset of this debate I find myself deeply troubled over evidence of Presidential complicity in thwarting justice and in the alleged abuse of power of that great office, particularly the use of the enormous power of the U.S. Government to invade and impinge upon the private rights of individuals.

Every member of this committee and the Congress must evaluate the facts in the light of adherence to the law, devotion to the Constitution, and to the great institutions of our land.

If the evidence is clear, then our constitutional duty is no less clear.

Mr. Chairman, I would like to yield the remaining time to Mr. Wiggins.

The CHAIRMAN. The gentleman from California is recognized for the balance of the time.

Mr. WIGGINS. Will the chairman inform me how much time I have?

The CHAIRMAN. The gentleman has 5 minutes and 40 seconds remaining.

Mr. WIGGINS. I thank my colleague for yielding and I want to talk about that evidence upon which I am sure you in conscience will decide this case with respect to one charge, and that is that the President has abused the IRS, in the language of the proposed articles that he, the President, corruptly endeavored to use the IRS in a discriminatory and improper manner.

The only evidence before us after a \$1 million investigation are 13 incidents. It is those incidents which form the basis of the charge; 12 of them involve no Presidential conduct whatsoever; 12 of them have nothing to do with the President, although I am prepared to admit they show an effort on the part of John Dean and occasionally and unsuccessfully on the part of Ehrlichman to gain access to IRS information. No evidence at all, ladies and gentlemen, of Presidential involvement in those 12 incidents.

The only incident connecting the President to this activity is the evidence of September 15, 1972.

Let me give you the backdrop to that. You recall John Dean testified to the development of an enemies list, so-called. That is his characterization of that list. A list was developed in 1971 for some purpose but nothing was done. Nothing was done in 1971 at all. But on September 11, 1972, John Dean took a list apparently at the direction of Ehrlichman to Johnnie Walters of the IRS and requested that audits be made on those persons on the list. He said, and the evidence is, that he did not act pursuant to Presidential instructions at that time. That evidence is uncontradicted.

But before our committee he speculated that it might, and in response to the careful examination of my colleague from Illinois, Mr. Railsback, as to whether or not that speculation was justified on the basis of any evidence then known to John Dean, John Dean replied to the Congressman: "It is pure speculation on my part and I prefer not to speculate," he said.

All right. We now move to the conversation itself on the 15th day of September and I want to ask you all as conscientious, reasonable men and women at what point did President Nixon corruptly abuse

the IRS, given the backdrop, of course, of a thorough congressional examination of this whole matter in which it was determined without equivocation that the IRS did not abuse the rights of American citizens.

The meeting of the 15th we will all recall, was in the White House, the Oval Office, between Haldeman and the President. The discussion commences and there pretty clearly is a reference to McGovern people, Kennedy people, and Dean working ruthlessly with respect to a plan, and you know what the President said, and the only thing he said? He said, yeah. And that is all. That is the only thing he said.

Those of us who have listened to tapes repeatedly know that that seems to be a habit of the President as others are talking, to say yeah, yeah, yeah.

Now, that is some evidence but I ask you to test that against the kind of evidence necessary to justify an impeachment.

The conversation process and John Dean enters the room. Then there is a reference to possible Presidential involvement of the FBI—rather, of IRS. Let me tell you what the evidence is. Dean tells the President, "I am keeping notes on a lot of people who have been less than our friends because some day, some day, their, they, we shouldn't forget the way some of them treated us."

Well, now, that is John Dean talking to the President. The President said, "great."

John Dean continues and he says that they have been asking for it. "They" meaning the unfriendly people, within the administration who are not responsive to Presidential instructions. The President says, "You know, we have never used these agencies in the past but things are going to change now. In the past we have been and, I am not quoting precisely but I am fairly characterizing the evidence, in the past we have been sticklers for regulation so as not to involve the Bureau, not to involve IRS. And Haldeman agrees. He said, "You and your damn regulations," preventing us from doing that.

Now, ladies and gentlemen, all that evidence is on one page. And that is the evidence of Presidential involvement in this serious charge of abuse of the IRS. I want my colleagues here to go back and review that page carefully and ask themselves if it carries with it the force of clear and convincing evidence justifying an impeachment of the President of the United States on the basis that he has endeavored to corrupt the IRS.

The CHAIRMAN. The time of the gentleman has expired.

Mr. WIGGINS. I think that charge is totally unjustified.

The CHAIRMAN. I recognize the gentleman from California, Mr. Waldie, for purposes of general debate not to exceed a period of 15 minutes. Mr. Waldie.

#### **STATEMENT OF HON. JEROME R. WALDIE, A REPRESENTATIVE IN CONGRESS FROM THE 14TH CONGRESSIONAL DISTRICT OF THE STATE OF CALIFORNIA**

Mr. WALDIE. Thank you, Mr. Chairman.

Mr. Chairman, I join I think with every member of this committee in the recognition of perhaps the unworthiness of almost everyone confronting this enormous decision in their ability to make a decision

that will be perfect in all respects. But I also want to make it as clear as I possibly can that I accept that responsibility and that I think it is part of the genius of this system that fallible human beings are called upon to exercise a judgment of this enormity on individuals who possess the ultimate and the maximum power of this country and after having sat through these hearings for the long hours and days and weeks that we have each participated in, I think there is no one on the committee that is not aware of how enormously fragile the liberties of this country are and how deeply subject to abuse they are by those who exercise great power indiscriminately. And it is with that recognition that I find myself quite willing to accept this responsibility and indeed, anxious to perform this responsibility in the manner that I deem it must be performed. And that manner is to state my conclusion prior to my case by the impeachment of the President of the United States and by his removal from office.

The last time this Nation had an opportunity to be exposed to the condition of the Presidency was last summer during the Ervin committee hearings in the Senate and at that time I think the general perception of the country was that the executive branch of this country and the President in particular were in deep, deep trouble, that there was something seriously wrong with the highest levels of our Government, and that there was something seriously lacking in the moral makeup of those who occupy those positions, and the question that plagued most of the people in the country was posed constantly, persistently and simply but eloquently by Senator Baker when he said, "What does the President know and when did he know it?" And at the conclusion of that hearing, that question was still left greatly unresolved though the doubts and the frustrations and the anxieties that resulted from not resolving that question persisted and the reason it was left unresolved was because of the failure of the President of the United States to provide the answer to those basic questions, what does the President know and when did he know it?

Well, we now know what the President knew and when he knew it, because of events that have occurred subsequent to the Ervin committee hearings with which the Nation had great familiarity. And those events were, contrary to the President's desire, he was finally forced by law and by the anger and the wrath literally of the American people to relinquish the most vital evidence that had been withheld, the tapes of his conversations, the best evidence of what the President knew and when he knew it.

But in the process of obtaining that evidence, there was almost a constitutional crisis, you will recall, because the President in his consistent and persistent efforts to obstruct the pursuit of truth in the answering of those questions fired Archibald Cox, the Special Prosecutor, caused the dismissal of the Attorney General of the United States and the Deputy Attorney General of the United States because they, too, persisted in following the remedies available to them under the Constitution of finding the answers to that question, the country rejected that attitude on the President's part and he conceded and he did relinquish the tapes; but did he? He relinquished some of the tapes. We later learned the vital information on those tapes, most vital, most instructive as to the answer to the question what did the President know and when did he know it, the June 20 conversation, 2 days after

the June 17 break-in of the Democratic National Committee, the conversation between the President and Haldeman, his top adviser, was nonexistent. Well, that tape was in the President's custody and that 18½ minutes was erased by human erasures, and the inference is inescapable that the President had that erased because it was so devastatingly incriminating. Subsequent to that I introduced a Resolution of Impeachment alleging that the President had obstructed justice, October 23, by his dismissal of Cox and his refusal to turn the tapes over to the proper investigating authorities. Thereafter, this committee convened to examine the question, what does the President know and when did he know it?

The next great avalanche of evidence involving that question was forthcoming when we, pursuant to our subpoenas, had a response, inadequate though it might be, of the edited transcripts, again the best evidence that was available, the conversations of the President to indicate what he knew and when he knew it, in terms of Watergate.

That avalanche of evidence, as altered as it later was determined to have been, as deficient as it later was determined to have been, by the elimination of vital portions of those tapes and transcripts, still was enormously helpful in answering that question that Senator Baker had posed, what did the President know and when did he know it? And now we are where we are today.

Has there been one iota of evidence, one shred of evidence, exonerating and exculpatory in its effect introduced on behalf of the President by the President or anyone else since those Senate committee hearings when Senator Baker asked that question? There has not been an iota of evidence. The President has had it within his power, if such evidence exists, to bring it forth and to exonerate him from these charges and to exonerate the Nation from the anguish he has pushed us into, and that we still labor under. But he has not done so. In response to my friends on the other side of this committee, who suggest the evidence does not show that the President has done anything, that simply is not so. There is a mountain of evidence showing that the President has acted to obstruct justice. Hush money alone would be sufficient to demonstrate that thesis.

But before we analyze that, what my friends fail to argue is there is another duty on every individual in this country, and particularly a President, and that is to respond when there is placed before you information that duty compels you to act on. And this President had that opportunity countless times pursuant to the transcripts that we have obtained, edited or not, where he was told of perjury on behalf of his subordinates, where he did nothing about that. Where he was told of efforts to conceal evidence, where he did nothing about that. Where he was told of obstruction of justice on behalf of his highest subordinates, where he did nothing about that.

To this day there is not one single instance where this President has come before any authority with evidence or with his understanding of evidence to ask for clarification.

The saddest part, the saddest part of all these transcripts, was the President's own bewilderment in the March 22 tape when he was talking about President Eisenhower, and he said this. This involved his failure to understand how this thing was falling apart so rapidly and what he could do about it, and he said about President Eisenhower:

"That's all he cared about. He only cared about—Christ, 'Be sure he was clean.' Both in the fund thing and the Adams thing. But I don't look at it that way. \* \* \* We're going to protect our people, if we can."

That is the saddest standard of conduct set forth in that entire page after page of transcripts, that the President denigrates a standard of conduct that Eisenhower had set for his subordinates. He said we don't look at it that way, and he doesn't look at it that way. He looks at it as necessary to cover up.

Now, when the President said in that same conversation, I want you all to stonewall it, let them plead the fifth amendment, cover up, or anything else if it would save the plan, that is the whole point, and then he said as my friends on the other side pointed out on the other hand, I would prefer you do it the other way, leaving aside for the moment the argument as if, as to the fact that he probably was referring to it as being a plan for Mitchell to come forth and take all of the blame and thereby get the President and his men off the hook. Leave that aside, examine his words to determine what they did do and what he did do from March 22. Did they come forth? Did they ascribe? Did they tell all? Or did they stonewall it? Did they cover up? Or did they do anything to save the plan?

From March 22 to this very day they are doing anything to save the plan, including the last day of evidence that was submitted to this committee when Mr. St. Clair had gone through all the tapes that were still not provided us pursuant to our subpoena and came up with one shred of exculpatory evidence, tapes that the President had heretofore said bore no relevance at all to Watergate, one shred of exculpatory evidence that really was not exculpatory in examination. It dealt with hush money.

Now the President makes a big point of determining what use that defendants would put the money to which he was paying them, to determine its legality or illegality. That is not the question. The question is for what purpose it was paid, not to what purpose it was put. And commonsense tells you that a President of the United States does not condone the payment of over \$400,000 to seven people occupying a D.C. jail cell because they have committed a burglary unless he wants something from them. That is not compassion. That is not a charitable institution. Particularly when it is done surreptitiously, covertly, fingerprints kept away from the money. That was cover up to buy their silence and that succeeded in buying their silence.

You cannot look at this case without feeling a deep sadness but a deeper anger, a deeper anger that this country was jeopardized to the extent it has been in the past 2 years, and you cannot look at the evidence in this case and the totality of what confronts us in this case without understanding that unless we fulfill our obligations as these fallible human beings in this genius of a governmental structure, our obligation and our duty is to impeach this President that this country might get about doing its business the way it should do and pursuant to standards that have been set for this country since its beginning.

Thank you, Mr. Chairman.

The CHAIRMAN. I recognize the gentleman from Iowa, Mr. Mayne, for purposes of general debate, not to exceed 15 minutes.

Mr. Mayne.

STATEMENT OF HON. WILEY MAYNE, A REPRESENTATIVE IN  
CONGRESS FROM THE SIXTH CONGRESSIONAL DISTRICT OF THE  
STATE OF IOWA

Mr. MAYNE. Thank you, Mr. Chairman.

Mr. Chairman, I wish to express my appreciation to you and to the ranking member, and to the staff members on both sides, for the many courtesies shown me since the inquiry was first undertaken in October. I do recall that I was, for a considerable period, very critical of the long delays experienced in getting this inquiry underway. But, once the staff was fully recruited and organized, I think I should duly recognize that the staff worked long and hard, and in a highly professional manner.

I, for one, happen to think that they either permitted themselves to or were ordered to waste a great deal of time and money on matters which are quite irrelevant to impeachment, although these are matters which will undoubtedly provide a great deal of political grist for the mills in the many campaigns to come.

Now, Mr. Chairman, for a lot of those members of this committee who did not prejudge the case against the President long ago, has not been an easy one. The possibility of being a party to the second impeachment of a President in the Nation's history just has to be extremely distasteful to any but the most partisan members of this committee. Extreme partisans who have always opposed the President bitterly may, indeed, feel that they now have the best of both worlds, free to go all out in their accusations and condemnations of the President. They can demand the penalty of impeachment, trial, and removal from office with a vengeance.

But for most members of the committee, the sobering prospect of impeachment brings no joy whatsoever. And I must say that it is especially repugnant to those of us who have been political allies of the President in happier days, and for whom a proimpeachment vote may be construed by some as an abandonment not only of the President of the United States, but of the Republican Party as well.

This is, of course, an erroneous concept, because the regular Republican organizations were systematically excluded from the Committee for the Re-Election of the President and had no part whatsoever in the Watergate debacle or the coverup. No vote by any member against any one or more of the proposed articles of impeachment should be interpreted as an endorsement or an approval of what went on at the White House; and whether they vote for impeachment or not, I think that most members of the committee will strongly condemn the many unwise, improper, and in some cases, downright illegal acts which were committed or directed by officials at the Committee for the Re-Election of the President or at the White House.

But in any event, I want to emphasize as Members of the House of Representatives, our duty transcends all partisan political considerations. We must reach our decision fairly and squarely on the relevant evidence, and insofar as we humanly can, without regard to partisan politics.

Many of these officials who fell so far short of accepted standards of probity and devotion to the duty, have already been indicted, pleaded,



or have been found guilty. I for one, and I know I am joined by many of my colleagues, if not all, certainly deplore the sorry examples which was set by the Chief Executive himself for his fellow citizens in his personal as well as his official conduct and responsibilities.

But the question is not whether we condemn and deplore the Presidential action or inaction, no matter how disappointing it may have been. The question before us is was the President guilty of treason, bribery, or other high crimes and misdemeanors which are the only constitutional grounds for impeachment.

Now, during recent weeks, the majority staff have drafted and circulated more than 25 alleged grounds of impeachment, most of which clearly did not meet these constitutional standards under the evidence. It is hard to avoid the conclusion that in drafting such omnibus articles, the majority staff had thrown in everything, including the kitchen sink, in an effort to justify the spending of more than \$1½ million in the accumulation of these so-called statements of information, some 39 volumes of them, with much of the information contained therein being quite irrelevant to the issue of impeachment and very repetitious.

But I have no doubt that these 39 volumes, and more to come, are going to be expensively printed in increasing numbers, and sent to every law school, college, and high school in the country, not to mention Democratic campaign headquarters at the appropriate times as a valuable source of materials on campaign literature.

At any rate, only a relatively small number of proposed articles of impeachment which have been floating around are still included in the resolution which was presented to us at the outset of this debate and is now before us. And I will try to avoid discussion of issues that have been dropped, so as not to consume time unnecessarily.

Now it seems to me that the strongest case to have been made against the President is the obstruction of justice charge as it relates to the alleged Watergate coverup. And I have been listening intently and will continue to be most interested in what my colleagues have to say on this, because it seems to me that this is the only real possibility that remains of a vote for impeachment.

Direct Presidential involvement in such a coverup must be proved, but so far as I have been able to hear up to this time, all of the evidence on this, or almost all of it, is purely circumstantial.

I am willing to listen and to be persuaded in our remaining deliberations, but as I listened to Mr. Doar in his argument for the prosecution, it seemed to me that he pointed to no direct evidence of Presidential involvement in the coverup, but had to arrive at his conclusion of Presidential involvement by a series of inferences piled upon other inferences. And I noticed that every time he made an inference, it was an inference unfavorable to the President of the United States.

Nine witnesses were called to testify on various phases of the Watergate coverup. Some of them at the request of the President, others at the request of the committee. But I think it is fair to point out that even in the case of those requested by the President, the committee counsel and members of the committee examined even those witnesses on matters far outside the scope of Mr. St. Clair's questioning of them. Reports were widely circulated that those witnesses called by the committee were going to drop a bombshell. I hesitate to use that word

after the events of last evening, but that they would drop a bombshell that would blow the President's defense right out of the water.

Well, that bombshell never exploded as we listen to the testimony of those nine witnesses, and eight of them, in fact, testified unequivocally that the President had no knowledge of their illegal activity and was not involved in the coverup. They remained unshaken on this point under rather strenuous cross-examination by a number of members and by staff.

Only the witness John Dean testified here in this hearing room, for the first time, that he had an impression in the conversation on March 21 that he felt the President had a desire that the payment be made. And of course, he had testified to the contrary several times during the previous year. After a year of examination in a number of forms, he suddenly came up with a very different version of the March 21 conversation. I don't think anyone on the committee can escape the fact that the credibility of Mr. Dean is very much in doubt.

For example, how can there be any doubt in any of our minds whatsoever that he lied most cruelly to Mr. Kalmbach? But on this whole issue of the Watergate coverup, I intend to continue listening carefully to my colleagues, looking for any evidence which may have escaped me, and to reserve final judgment on this and the other remaining issues until all of the debate has been concluded and we begin to vote on each of the remaining articles.

Now, I was impressed by the concern shown by my good friend from Illinois, Mr. Railsback, for the effect which these proceedings may have on the youth of our country. I believe he suggested that our young people, if our young people do not feel that we are proceeding fairly, will be alienated to such an extent that their reaction to Lyndon Baines Johnson will seem tame by comparison. Now I, too, would like to say to our youth and to all of the citizens of our country, I ask them to be fair in comparing these two Presidents and the sort of investigation and scrutiny that they have undergone.

Never before in history has any President been subjected to the intense investigation of his personal and public life, which has been the experience of Richard Nixon. The Senate, as I believe I will correctly refer to it as the Spend-it, has spent more than \$2 million on its Watergate investigation. The House has spent more than \$1¼ million on this Judiciary Committee investigation alone. Two dozen lawyers at the Senate committee, another two dozen here, numerous public interest law firms, and most of the investigative reporters of the country have been working full time trying to uncover any possible irregularity on the part of the President.

If they are, indeed, interested in fair play, let us recall whether any such investigation was ever launched at any time against Lyndon Johnson, a man who came to the Congress in 1937 with no resources other than his congressional salary of \$10,000 and until he became Vice President in 1961, he had never received a salary of more than \$22,500. Yet, during his years in the House, the Senate, the Vice Presidency and the Presidency, he acquired a multimillion-dollar empire based on monopolistic licenses granted by the Federal Government in the lucrative television and radio industry. The Johnson family for many years held the only commercial station licenses, radio, television licenses in the highly populated Houston area. These were the

years when Mr. Johnson was the powerful majority leader of the U.S. Senate, with great influence over the FCC which denied repeated applications of prospective competitors who wanted to share in this lucrative market.

With the tremendous markets gleaned from this Government controlled industry, the Johnson interests branched out into other investments which were also dependent to some degree on Government influence.

LBJ left the White House a very wealthy man, but was he ever investigated in the manner that Richard Nixon has been investigated, or investigated at all? I wonder could the reason be that for all but 4 years of the 32 years that he was in public office, his party, the Democratic Party, controlled both Houses of the Congress, and during much of that time, he was a highly influential leader of that party.

There was no disposition on the part of that Congress to spend over \$4 million or any amount in investigating a majority leader or the Vice President or the President.

But, fair, or necessary—

The CHAIRMAN. The time of the gentleman has expired.

Mr. MAYNE. Might I complete this sentence, Mr. Chairman?

But fair or not, Richard Nixon must be impeached, and only impeached, if we find him guilty by relevant, competent evidence of bribery, treason, or other high crimes and misdemeanors.

The CHAIRMAN. I recognize the gentleman from Alabama, Mr. Flowers, for purposes of general debate, not to exceed 15 minutes. Mr. Flowers.

#### **STATEMENT OF HON. WALTER FLOWERS, A REPRESENTATIVE IN CONGRESS FROM THE SEVENTH CONGRESSIONAL DISTRICT OF THE STATE OF ALABAMA**

Mr. FLOWERS. Before considering directly the subject matter at hand, Mr. Chairman, there are a couple of things that I would like to get off my chest.

First of all, and I think of great import to the people and the Congress and the Constitution, is the manner in which these proceedings have been conducted. Some have said for the most part they have been fair. And I think that is an understatement, for with few exceptions—and I am talking about the unfortunate and grossly overemphasized leaks—these proceedings have been scrupulously fair. Mr. Chairman, you deserve a great deal of this credit, but the rest of the committee and the entire staff are also deserving.

Let me mention with a great deal of home-State pride that a fellow member of the Alabama Bar Association, Richard Gill, of Montgomery, has made a fine contribution as a senior member of the inquiry staff.

Now, let me mention here a few of the important procedural rulings which have contributed I think to this fairness of which I speak. First, the President's counsel was allowed to participate in the entire evidentiary process, cross-examining witnesses and presenting evidence and legal arguments in the President's behalf. This was only as it should be, I say, as was the decision to call all of the witnesses requested

by Mr. St. Clair and by members of this committee. And I in particular, Mr. Chairman, appreciate this courtesy because perhaps I was the most insistent on calling Mr. Colson.

Then I must direct my remarks here to members of the press that are here and elsewhere before I slip back into anonymity with the rest of my colleagues on this side of the Capitol. Many of you have become real people to me, and hesitatingly I say friends, over the last months instead of merely a byline, a commentator, or even an anchor-man. What I want to say here is not intended in any way to be in rancor or bitterness because I understand you better than I ever have before, and what your problems are in getting the news and getting it out. But, my feelings were, you might say, well overstated last night by my dear friend from New Jersey, Mr. Sandman. You members of the press have a unique role in our society. You are protected by the first amendment, but because you are so protected, and because of your growing influence, you have a great and a growing responsibility. And I simply ask that each of you look inward, as we have here all had to look inward in recent months, and decide for yourselves if you have treated fairly with the President.

It occurs to me that the perspective of middle America does not receive equal time, and I believe that you ladies and gentlemen of the press, whom I intend to honor by these remarks, that you ought to be interested in setting this straight.

Now, to the problem at hand, and make no mistake, my friends, here and out there, it is a terrible problem. The alternatives are clear, to vote to impeach the President of the United States on one or more of the proposed articles of impeachment, or to vote against impeachment. And there is no good solution among these alternatives. We do not have a choice that to me represents anything desirable.

I wake up nights, at least on those nights I have been able to go to sleep lately, wondering if this could not be some sordid dream. Impeach the President of the United States. The Chief Executive of our country, our Commander in Chief in this cruel and volatile world that we live in in 1974.

The people that I represent, just as I do, and most Americans I think really want to support the President. Surely we want to support the Constitution and the best interests of the country. But, in so doing, we also hope that we can support the office of the Presidency, and that citizen among us who occupies it at any given time.

But, unfortunately, this is no bad dream. It is the terrible truth that will be upon us here in this committee in the next few days.

And then there is the other side of the issue that I speak of. What if we failed to impeach? Do we ingrain forever in the very fabric of our Constitution a standard of conduct in our highest office that in the least is deplorable, and at worst impeachable? This is, indeed, a terrible choice we have to make. And as we on this committee suffer through these times, I cannot help but reflect on the words attributed to Teddy Roosevelt about the man in the arena whose face is marred with sweat, dust, and blood. Now, some of the things that bothered me most are troubling to all people who fear that big government can encroach on the freedom of people. The institutions of this country have been set up by the people to serve them, to carry out those functions that are

necessary to a peaceful and a free society. They are not created to serve the interests of one man or one group of men, or the political gain of anyone.

Such institutions as the FBI, the Department of Justice, the CIA and surely the Internal Revenue Service are given great power because the people, through Congress, have needed those institutions to guard and protect them and their liberty. Yet, there has been evidence before us that the White House had an organized effort to get the IRS to audit and harass enemies of the administration.

The Government in its role of tax collector must be above any political use. It cannot be an instrument of power, of punishment and of political advantage. The power of the IRS reaches into every life, and it is a chilling thought that it might be a political instrument to get the enemies of the Government.

My friend, Tom Railsback, spoke of this last night, that to him as a Republican the use of the IRS to get your enemies is a frightening prospect, and in my State in 1970 we have evidence of the White House leaking tax information, contrary to law, in an apparent attempt to affect the Governor's campaign that year. There has been evidence that the FBI, the Nation's police, were used to spy on those who disagreed with the administration, and then some evidence that the CIA was used to supply equipment and assistance to a sort of private police group to break into a doctor's office, and possibly to carry out other activities for some sort of political gain.

And even more troubling, there is evidence that when the Justice Department and the FBI sought to investigate the Watergate burglary and the Fielding break-in, the President and his associates systematically mislead those agencies, withheld the truth from them, and furnished false proof.

And then most troubling to me, in the spring of 1973, Assistant Attorney General Petersen, who was really the Acting Attorney General since Mr. Kleindienst had recused himself, met repeatedly with the President and told the President what the investigation had shown as to the involvement of Haldeman, Ehrlichman, Dean, and others. He urged the President to help in dealing with the investigation, and the President assured him that the information would be kept confidential. Yet, not only did the President relay this information to Haldeman and Ehrlichman, who were the ones under investigation, but helped them use it to structure a plan to defend themselves. And the President did not give Petersen the information that he himself already had. In fact, by Petersen's testimony, when he asked the President if he had information about the break-in, he was told "No," even though the President had been told the facts by Dean and Ehrlichman.

You know, the power of the Presidency is a public trust, just like our office. And the people must be able to believe and rely on their President. Yet, there is some evidence before us that shows that the President has given solemn public assurances to the people involving the truth and the faith of his powerful office when those assurances were not true, but were designed to deceive the people and mislead the agencies of Government who were investigating the charges against Mr. Nixon's men. If the trust of the people and in the world

of the man, or men, or women, to whom they have given their highest honor, or any public trust is betrayed, if the people cannot know that their President is candid and truthful with them, then I say the very basis of our Government is undermined.

And finally, Mr. Chairman, there is the problem of the basic relationship between the President and the Congress. This committee I think is struggling to act fairly to reach the truth, yet, when we have requested and subpoenaed certain evidence that we all felt, or most all of us felt was needed, it has been refused, or given to us in a form that perhaps we cannot rely on fully. But, you know, in our rush to recognize and identify all of these problems, which I insist that we must do, let us not forget here today, or any day during these proceedings that they exist for the most part because of what human beings did or failed to do in contradiction of their duties and responsibilities under our system.

Obviously America is a nation with many flaws, but it is also a nation with hope so vast that only the most foolish or the most pessimistic would fail to realize it. We have all made mistakes, and we will probably make some more in the future. Some of them have been big ones with important and even sometimes tragic consequences. But, my friends and fellow countrymen, we have not always failed, and it is important to be aware of our successes as well. In all of history there has been no other nation to do as much for our own people, while at the same time extending a helping hand of freedom and generosity and compassion to a world in need. And I say it is important to remember these accomplishments, and let us remember that some of them have been accomplished in the last 6 years under President Nixon, because they might otherwise be persuaded to abandon those values and those institutions that are responsible largely for these achievements and they are also, I say, our best hope for further progress.

Now, I have said on many times that we can make great progress and improve our society, and still not have anything that will live or last unless we concern ourselves with underlying values. If we believe in nothing, my friends, if we don't have a sense of moral purpose, then there is little possibility of our Nation or we as individual citizens reaching the heights of which we are capable.

We have, in the tradition of this Nation, a well-tested framework of values, liberty, justice, worth, and dignity of the individual, individual responsibility, and more. Our problem is not now to find better values, but I say our problem is to be faithful to those that we profess, and to make them live in modern times.

You know, I always think back to the Preamble of our Constitution. It starts off, as we all know, "We the people of the United States." And surely, at least to me, there is no more inspiring phrase than, "We the people of the United States." Not we the public officials of the United States, not we the certified experts, or we the educators, or we the educated, or we the grownups over 21 or 25. Not we the privileged classes or whatever. But just simply we the people, we acting in our communities across the Nation can pull our fragmented society together again. At the grassroots of our complex and mechanized and industrialized Nation, we can renew the moral fiber of America. We,

young and old alike, we can create an America in which men and women, and young people speak to one another once again in trust and mutual respect. We sharing common objectives and working toward common goals can bring our Nation to a point of confidence and well-being. We can provide a soul and character so vitally needed in our native land.

You know, we are the people of the United States, and we can do these things. We here in this room are the representatives also of the people of the United States, and even more particularly in this case, the representatives of the representatives of the people. And we have an awesome task that no one else can do for us. Let me close my remarks here by paraphrasing something Harry Truman was supposed to have said once. "I try never to forget who I am, and where I come from and where I am going back to." And I would add that I cannot forget that I must get up every morning for the rest of my life and live with my decision here on these terrible alternatives. I shall listen to these debates, and only then shall I cast my vote. And I can only vote as I am convinced in my heart and mind, based on the Constitution and on the evidence.

Thank you, Mr. Chairman.

The CHAIRMAN. The committee will recess until 1:30.

[Whereupon, at 12:08 p.m., the committee was recessed, to reconvene at 1:30 p.m. this same day.]

#### AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

I recognize the gentleman from Maryland, Mr. Hogan, for purposes of general debate, not to exceed a period of 15 minutes. Mr. Hogan.

#### **STATEMENT OF HON. LAWRENCE J. HOGAN, A REPRESENTATIVE IN CONGRESS FROM THE FIFTH CONGRESSIONAL DISTRICT OF THE STATE OF MARYLAND**

Mr. HOGAN. Thank you, Mr. Chairman.

More than a century ago, in a time of great national trial, Abraham Lincoln told a troubled and bitterly divided Nation: "We cannot escape history. We of this Congress and this administration will be remembered in spite of ourselves. No personal significance or insignificance can spare one or another of us. The fiery trial through which we pass will light us down in honor or dishonor to the last generation."

Today, we are again faced with a national trial. The American people are troubled and divided again, and my colleagues on this committee know full well that we cannot escape history, that the decision we must jointly make will itself be tested and tried by our fellow citizens and by history itself.

The magnitude of our mission is awesome. There is no way to understate its importance, nor to mistake its meaning. We have unsheathed the strongest weapon in the arsenal of congressional power; we personally, members of this committee, have felt its weight, and have perceived its dangers.

The Framers of the Constitution, fearing an Executive too strong to be constrained from injustice or subject to reproof, arrayed the Con-

gress with the power to bring the Executive into account, and into peril of removal, for acts of, "treason, bribery or other high crimes and misdemeanors." Now, the first responsibility facing members of this committee was to try to define what an impeachable offense is. The Constitution does not define it. The precedents which are sparse do not give us any real guidance as to what constitutes an impeachable offense. So each of us in our own conscience, in our own mind, in our own heart, after much study, had to decide for ourselves what constitutes an impeachable offense. Obviously, it must be something so grievous that it warrants the removal of the President of the United States from office. I do not agree with those that say an impeachable offense is anything that Congress wants it to be and I do not agree with those who say that it must be an indictable criminal offense. But somewhere in between is the standard against which we must measure the President's conduct.

There are some who say that he should be impeached for the wrongdoing of his aides and associates. I do not concur in that. I think we must find personal wrongdoing on his part if we are going to justify his impeachment.

The President was elected by an overwhelming mandate from the American people to serve as their President for 4 years and we obviously must be very, very cautious as we attempt to overturn this mandate and the historic proportions that this deliberation has. After a member decides what to his mind constitutes an impeachable offense he then has to decide what standard of proof he would use in trying to determine whether or not the President of the United States had committed an impeachable offense. Now, some have said that we are analogous to a grand jury and a grand juror only need find probable cause that a criminal defendant had committed an offense in order to send the matter to trial. But because of the vast ramifications of this impeachment, I think we need to insist on a much higher standard. Our counsel recommended clear and convincing proof. That is really the standard for civil liability, that or a preponderance of evidence, and I think we need a higher standard than that when the question is removing the President of the United States from office.

So I came down myself to the position that we can have no less a standard of proof than we insist on when a criminal trial is involved, where to deny an individual of his liberty we insist that the case against him be proved beyond a reasonable doubt. And I say that we can insist on no less when the matter is of such overriding import as this impeachment proceeding.

I started out with a presumption of innocence for the President because every citizen of this country is entitled to a presumption of innocence, and my fight for fairness on this committee is obvious to my 37 friends and colleagues who I think will corroborate that I was as outspoken as every member—any member of this committee in calling our very fine staff to task when I thought they were demonstrating bias against the President, when I thought they were leaving from the record parts of the evidence which were exonerating of the President. I thought with the chairman and the majority, with some of my colleagues on this side, insisting that every element of fairness be given to the President, that his counsel should sit in on deliberation and offer arguments and evidence and call witnesses and my friend from



Alabama mentioned that earlier, Mr. Flowers. But he will also have to confess that most of these concessions to fairness were made only after partisan dispute and debate which is what our whole legislative process is about in the Congress.

So I do not concede to anyone on this committee any position of fighting harder and stronger than the President get a fair hearing of the evidence and while I do have some individual specific objections to isolated incidents of unfairness, I think on the whole the proceeding has been fair.

Now, I am a Republican. Party loyalty and personal affection and precedents of the past must fall, I think, before the arbiter of men's action, the law itself. No man, not even the President of the United States, is above the law. For our system of justice and our system of government to survive, we must pledge our highest allegiance to the strength of the law and not to the common frailties of men.

Now, a few days ago, after having heard and read all the evidence and all the witnesses and the arguments by our own staff and the President's lawyer, I came to a conclusion, and I felt that the debates which we began last night were more or less pro forma and I think they have so far indicated that. I feel that most of my colleagues before this debate began had made up their mind on the evidence, and I did, so I saw no reason to wait before announcing the way I felt and how I was going to vote.

I read and reread and sifted and tested the mass of information and then I came to my conclusion, that Richard Nixon has beyond a reasonable doubt committed impeachable offenses which in my judgment, are of sufficient magnitude that he should be removed from office.

Now, that announcement was met with a great deal of criticism from friends, from Government officials, from colleagues in Congress. I was accused of making a political decision. If I had decided to vote against impeachment, I venture to say that I would also have been criticized for making a political decision. One of the unfortunate things about being in politics is that everything you do is given evil or political motives. My friend from Alabama, Mr. Flowers, said that the decision that we make is one that we are going to have to live with the rest of our lives. And for anyone to think that this decision could be made on a political basis with so much at stake is something that I personally resent.

It is not easy for me to align myself against the President, to whom I gave my enthusiastic support in three Presidential campaigns, on whose side I have stood in many a legislative battle, whose accomplishments in foreign and domestic affairs I have consistently applauded.

But it is impossible for me to condone or ignore the long train of abuses to which he has subjected the Presidency and the people of this country. The Constitution and my own oath of office demand that I "bear true faith and allegiance" to the principles of law and justice upon which this Nation was founded, and I cannot, in good conscience, turn away from the evidence of evil that is to me so clear and compelling.

My friend from Iowa, Mr. Mayne, detailed some of the allegations against prior administrations and I do not in any way question that. I agree with him that there was wrongdoing on the part of previous

Presidents, maybe all Presidents, but I was not in a position where I had to take a stand, where I approve or disapprove of blatant wrongdoing, and I am in a position now.

My friend from New Jersey, Mr. Sandman, said last night he wants to see direct proof and some of my other friends on this side of the aisle have said the same thing, but I submit that what they are looking for is an arrow to the heart and we do not find in the evidence an arrow to the heart. We find a virus that is—that creeps up on you slowly and gradually until its obviousness is so overwhelming to you.

Now, he has asked for direct proof. I think it is a mistake for any of us to begin looking for one sentence or one word or one document which compels us to vote for or against impeachment. It is like looking at a mosaic and going down and focusing in on one single tile in the mosaic and saying I see nothing wrong in that one little piece of this mosaic. We have to step back and we have to look at the whole picture and when you look at the whole mosaic of the evidence that has come before us, to me it is overwhelming beyond a reasonable doubt.

Let us look at the President's own words. He uses the words "cover-up" and "cap on the bottle" and "the plan" and "containment" and he is concerned about what witnesses have said and what they will say. He is concerned about where the investigation is going.

Now, let us focus in on the thing that everybody talked about, the Hunt payment. Let us look at this as reasonable and prudent men. What did Mr. Hunt intend? His payments and demands had been relayed through his wife before her death. After his wife he had to make them directly. So what did he do? He called Colson to make demands and we have a transcript of what he said and I want to quote: "This is a long haul thing and the stakes are very, very high and I thought that you would want to know that this thing must not break apart for foolish reasons. We are protecting the guys who are really responsible but at the same time, this is a two-way street, and as I said before, we think that now is the time when a move should be made and surely the cheapest commodity available is money."

And then he went and he talked to Colson's lawyer, Bittman, and to Bittman he told him the same thing, that commitments were made and he would blow the lid off the whole thing unless the money was paid to him.

And then he went and saw O'Brien, the attorney for the Committee To Re-Elect the President, and he said to him that he had to have \$60,000 for legal fees and \$75,000 for family support. He said if he did not get it, he would reveal a number of seamy things that he had done for the White House and if things did not happen soon, he would have to review his options.

The man that was making those demands had over \$200,000 in the bank that he had collected from his wife's insurance. So I ask my colleagues on the committee, what would the reasonable and prudent man assume that he had in mind? It is obvious. He intended to blackmail the White House.

Well, now, let us go inside the White House and let us see what they say. They talk about this. Can we raise \$1 million? You know, is this the way to go? Will there be other demands from him? How were the payments made in the past? These are the President's own words. He

says, well, can we handle it through the Cuban committee the way we handled it before, indicating he already knew about the previous payments made. These are his own words. And then he says wasn't that handled through the Cuban committee and John Dean says, well, no, not exactly. That is not the way it was. And the President says, well, that is the way it is going to have to be.

Is this an urging to conceal the truth or is it not? So the payment was made to Hunt and it doesn't matter to me whether the President approved it before it was made. A conspirator, as all we lawyers know, can get in on a conspiracy at any point, even after the fact, so it is immaterial whether or not at the point in time he said whether or not I approve it you pay it. The fact is and the thing that is so appalling to me is that the President, when this whole idea was suggested to him, didn't in righteous indignation rise up and say get out of here. You are in the office of the President of the United States. How can you talk about blackmail and bribery and keeping witnesses silent. This is the Presidency of the United States, and throw them out of his office and pick up the phone and call the Department of Justice and tell them there is obstruction of justice going on. Someone is trying to buy the silence of a witness.

But my President didn't do that. He sat there and he worked and worked to try to cover this thing up so it wouldn't come to light.

And the FBI is conducting an investigation. He says publicly, I want to cooperate with the investigation and the prosecution but privately all his words compel the contrary conclusion. He didn't cooperate with the investigation or the prosecution. And it has already been said by some that Henry Petersen called and said initially in the conversation, well, it is not going to go any further. I know I have got to keep it secret. He no sooner hung up the phone than he was telling the defendants about whom this damaging information was made, what they could do to counteract the case that the prosecution had against them.

Well, I could go on and on and on. I am surprised that some of my colleagues—the telephone call from Pat Gray. Pat Gray was a man who did many things wrong. He was loyal to his leader. But at some point his conscience bothered him and he wanted to tell the President of the United States that his aides were destroying the Presidency.

The CHAIRMAN. The time of the gentleman has expired. I will give the gentleman an opportunity to finish his sentence and his thought.

Mr. HOGAN. I appreciate the chairman.

Pat Gray called the President to tell him that his aides were destroying the Presidency and instead of the President saying, well, give me more information about this, I want to know if my aides are doing anything wrong, I want to know, and Pat Gray says in his testimony there was a perceptible pause and the President said, "Pat, you just continue to conduct your aggressive and thorough investigation."

He didn't have to know because he already knew and he consistently tried to cover up the evidence and obstruct justice and as much as it pains me to say it, he should be impeached and removed from office.

The CHAIRMAN. The time of the gentleman has expired.

I recognize the gentleman from South Carolina, Mr. Mann, for purposes of general debate, for a period not to exceed 15 minutes.

Mr. Mann.

STATEMENT OF HON. JAMES R. MANN, A REPRESENTATIVE IN  
CONGRESS FROM THE FOURTH CONGRESSIONAL DISTRICT OF  
THE STATE OF SOUTH CAROLINA

Mr. MANN. Thank you, Mr. Chairman.

You know, it is important that the American people have respect for these proceedings. As we have gone along and done our work in private, the news media has done the best job it could, under the trying circumstances, to glean what we were doing, and, yesterday and today, the American public has been getting its first look at what this committee was doing.

Well, among other things we were reviewing about 40 notebooks and taking testimony that now fills about 10 volumes. Based on what the public saw in the press, I would imagine that you thought there was some sort of witch hunt going on and you have been somewhat surprised at the recognition by the Members here today and yesterday that these proceedings have been conducted in a basically fair setting with objectivity and participation by the President's counsel.

You know, I was impressed by what a witness and his lawyer had to say before the committee last week, and I wanted to read you what Charles Colson said about the activities of this committee behind those closed doors.

I do want to say that I didn't quite expect the committee to be operating the way it is and I suppose because I have been in the Senate working for a Senator and I have been around congressional committees a long time, I really have been deeply impressed both by the questions that you have asked, by the notes that I have noticed each of you taking, by the fact I think every one of you are looking at this in the long view, the historic role as you sit here, and I think you have all just given me a little restoration of faith in the constitutional process because I think every one of you are taking this job seriously without regard to the cameras outside and are really trying to come to a just conclusion for the country. And I just thank you for having me.

And then his lawyer, Mr. Shapiro—

I have represented witnesses before congressional committees for something like 20 years in times perhaps as unhappy as these, with passions perhaps as high as they are in these times. This is the most impressive committee performance it has ever been my pleasure to witness, both in terms of treatment of the witness, and the attention of the members of the committee, in connection with the questions that were asked, and the kind of consideration the Chair has shown to other members of the committee and to the witness and the counsel, and I say as a citizen wholly apart from Mr. Colson's counsel, and I want to separate that, you are very impressive people and I think you are doing a very impressive job.

Now, what of these people that they are talking about this committee. It is not a group of volunteers. It is the Judiciary Committee of the House of Representatives and the average tenure on this committee is probably 6 years. We have different backgrounds. We have different biases, conscious or unconscious. Different philosophies. But I am persuaded that the search for the truth is paramount in each of us and that each has the courage to vote for that truth because, like beauty, it is in the eyes and the heart and the conscience of the seeker.

This is a big country and we represent a cross section of that country. It is with some concern that I have been aware over these weeks of the detractors of this committee, those who would attempt to discredit this committee for whatever motivation, those who would fire

the fuels of emotion that are based largely on a confusion that exists in our country today concerning the separation of powers and concerning the role of a Representative in this Government of ours. Do yet in the United States the people still govern? Do they govern through elected representatives? In this era of power that our governmental system has brought us to in the world where our involvement in foreign trade and foreign affairs puts the President out in front as the symbol of our national pride and as the bearer of our flag, and here we have in the House of Representatives 435 voices speaking on behalf of different constituencies with no public relations man employed by the House of Representatives, and I wonder if the people still do want their elected Representatives to fulfill their oath to preserve, protect, and defend the Constitution of the United States. Do you want us to exercise the duty and responsibility of the power of impeachment, whether that means conviction or exculpation?

You know, some of the things that cause me to wonder are the phrases that keep coming back to me, "oh, it is just politics," or, "let him who is without sin cast the first stone."

Are we so morally bankrupt that we would accept a past course of wrongdoing or that we would decide that the system that we have is incapable of sustaining a system of law because we aren't perfect? There has been one perfect to whom one of those statements is attributed. But our country has grown strong because men have died for the system. You will hear "the system" used by each of us but we have built our country on the Constitution and that system contemplates and that system has resulted in men putting that system above their own political careers. That system has been defended on battlefields and statesmen have ended their careers on behalf of the system and have either passed into oblivion or into immortality. We have all read of the role of Edmund G. Ross in the Johnson impeachment and how he voted his conscience. Did we also know that about 20 years later he said that he would hope that his vote would not be construed as being in derogation of that constitutional power of impeachment and that at a proper time on some future day some Congress would have the courage to fulfill its duty.

How much I would have like to have had all of the evidence and I say now we are here, we are ready to receive additional evidence. It is not too late.

How much I would have liked to have heard on the transcripts, let's do it because it is good for our country.

I have expressed no prejudgment. I am entitled to the thoughts, the arguments, of my colleagues on this committee. I am entitled to the time remaining to me to study the evidence, and when I vote, I do not ask that everyone agree with my vote, although I would hope that before they disagree that they would recognize my role and their responsibility to know the facts as I know them. But I would ask that they attribute to me and to every member of this committee compliance with our oath, sincerity and conviction because it has been said this verdict—and I use the wrong word, because I would not through egotistic exercise deprive the Senate of the United States of trying a proper case and reaching a proper verdict, and let us not on this committee fall into the trap of saying we are determining the guilt or innocence of the President—will determining whether or not the

American people are entitled to a trial in an open forum which you have not had these past 9, 10, or 11 weeks or these past 6 months. So let us not usurp unto ourselves the final judgments but perform our function to determine whether or not there is clear and convincing evidence of impeachable conduct upon which the President of the United States shall be called upon to have the opportunity to explain his conduct consistent with the requirements of the oath that he took—consistent with that most important of all functions to which all Americans look to him to see that the laws be faithfully executed. And in that respect we are faced in the future with a very, very serious problem, one that perhaps permits a President to escape accountability because he may choose to deal behind closed doors or to deal between two close, longtime, alter-ego trusted subordinates. We must examine our options to preserve our freedom. The President has the evidence. This committee is composed of Americans who are interested in national security, who have proposed and are ready to provide a mechanism for the screening of that evidence consistent with national security, that evidence taken in the office of the people of the United States at 1600 Pennsylvania Avenue at the expense of the taxpayers. I am starving for it but I will do the best I can with what I have.

The CHAIRMAN. The Chair recognizes the gentleman from Virginia, Mr. Butler, for purposes of general debate and not to exceed 15 minutes.

**STATEMENT OF HON. M. CALDWELL BUTLER, A REPRESENTATIVE  
IN CONGRESS FROM THE SIXTH CONGRESSIONAL DISTRICT OF  
THE STATE OF VIRGINIA**

Mr. BUTLER. Thank you, Mr. Chairman.

Let me express first, Mr. Chairman, to you and the other members of this committee the high regard I have come to have for all.

While this has been a most distasteful experience for us all, I share great pride in the manner in which the membership of this committee with few exceptions has conducted itself in these deliberations. I want to express my personal appreciation to the staff for the monumental task which they have performed with such diligence over these months.

The CHAIRMAN. Mr. Butler, I have been advised that they will hold the quorum open so that we may respond to the quorum call, and I will recognize you on the return. I think we should at least respond to the quorum call.

Mr. BUTLER. Will I get my time back, Mr. Chairman?

The CHAIRMAN. You will receive all of your time.

The committee will recess.

[Short recess.]

The CHAIRMAN. The committee will be in order, and I recognize the gentleman from Virginia, Mr. Butler, for purposes of general debate, not to exceed 15 minutes. Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman. I have already expressed my high regard for the committee and my appreciation to the staff.

I also want to say that I regret the unfortunate misunderstanding which developed between Mr. Jenner and the minority members. We are indebted to him for bringing his great experience and talent to

bear upon this investigation and for his hard work and fine presentation to us.

I am particularly proud of the fine work of my fellow townsman, Sam Garrison, who as minority counsel restored balance to the final work of our presentation, while professionally keeping a secret even to this moment his personal view of the evidence.

Likewise, I would like to express once more the pride that I share in the significant accomplishments of the administration of Richard Nixon. I have worked with him in every national campaign in which he has taken part and indeed there are those who believe I would not be here today if it were not for our joint effort in 1972. And I am deeply grateful for the many kindnesses and courtesies he has shown me over the years. I am not unmindful of the loyalty I owe him. I mention this, Mr. Chairman, so that you may be aware how distasteful this proceeding is for me as it must have been for every other member of this committee.

And one more thing: I have a word for my colleagues on this side of the aisle and to my Republican friends who may be listening and for my colleague from Indiana who is concerned about the effect impeachment will have for the Republican party.

For years we Republicans have campaigned against corruption and misconduct in the administration of the Government of the United States by the other party. Indeed in my first political experience in 1952, Trumanism was the vehicle that carried Dwight D. Eisenhower to the White House. And, somehow or other, we have found the circumstances to bring that issue before the American people in every national campaign.

But Watergate is our shame. Those things happened in the Republican administration while we had a Republican in the White House and every single person convicted to date has one way or the other owed allegiance to the Republican Party.

We cannot indulge ourselves the luxury of patronizing or excusing the misconduct of our own people. These things have happened in our house and it is our responsibility to do what we can to clear it up. It is we, not the Democrats, who must demonstrate that we are capable of enforcing the high standards we would set for them.

I agree with the sentiments often expressed today and yesterday that the Congress of the United States and each Member is indeed being tested at this moment, but the American people may also reasonably inquire of the Republican Party, "Do you really mean what you have said?"

My colleague, the gentleman from California, Mr. Wiggins, in his very able opening remarks of this morning, reminds us once more that we must measure the conduct of the President of the United States against the standards imposed by law, in which he is eminently correct.

I would like to share with you for a moment some observations I have with reference to these standards.

Impeachment and trial in the Senate is the process by which we determine whether or not the President of the United States has measured up to the standards of conduct which the American people are reasonably entitled to expect of him. The conduct which the Ameri-

can people are reasonably entitled to expect of the President of the United States is spelled out in part in our Constitution and in part in our statutes.

We are particularly grateful to our colleague from New York, Congressman Fish, for his exposition on the duties imposed upon the President of the United States by our Constitution.

It is my judgment also that the standard of conduct which the American people are reasonably entitled to expect of their President is established in part by experience and precedent. That is one reason why I am so concerned by what has been revealed to us by our investigation.

It will be remembered that only a few hours ago the gentleman from Iowa, Mr. Mayne, has argued that we should not impeach because of comparable misconduct in previous administrations.

There are frightening implications for the future of our country if we do not impeach the President of the United States. Because we will, by this impeachment proceeding, be establishing a standard of conduct for the President of the United States which will for all time be a matter of public record.

If we fail to impeach, we have condoned and left unpunished a course of conduct totally inconsistent with the reasonable expectations of the American people; we will have condoned and left unpunished a Presidential course of conduct designed to interfere with and obstruct the very process which he is sworn to uphold; and we will have condoned and left unpunished an abuse of power totally without justification. And we will have said to the American people: "These misdeeds are inconsequential and unimportant."

If at the conclusion of my remarks I have some time remaining, Mr. Chairman, I will endeavor to respond to, at least a part of, the earlier commentary on the evidence. But for the moment, I have two observations which must have a bearing on what this Congress shall eventually do.

The people of the United States are entitled to assume that their President is telling the truth. The pattern of misrepresentation and half-truths that emerges from our investigation reveals a Presidential policy cynically based on the premise that the truth itself is negotiable.

Consider the case of Richard Kleindienst, nominee for the Attorney General of the United States. The President had told him in unmistakable terms that he was not to appeal the ITT case, but before the Senate of the United States Mr. Kleindienst explicitly denied any effort by the President to influence him in this regard. The President, having knowledge of this, affirmed to the American people his continuing confidence in this man.

The record is replete with official Presidential misrepresentations of noninvolvement, and representations of investigations and reports never made, if indeed undertaken at all. There are two references to a Dean report that we have not seen.

Consider the case of Daniel Shorr. In a moment of euphoria on Air Force I, Presidential aides called upon the FBI to investigate this administration critic. Upon revelation, Presidential aides fabricated and the President affirmed that Shorr was being investigated for possible Federal appointment—nothing could be further from the truth.



Let me observe also that throughout the extensive transcripts made available to us of intimate Presidential conversation and discussion there is no real evidence of regret for what occurred, or remorse, or resolution to change and precious little reference to, or concern for constitutional responsibility or reflection upon the basic obligations of the Office of the Presidency.

In short, power appears to have corrupted. It is a sad chapter in American history, but I cannot condone what I have heard; I cannot excuse it, and I cannot and will not stand still for it.

This is not to suggest that there are not many areas of our investigation which clearly reveal to me that some charges do not elevate themselves to this status of an impeachable offense. I am satisfied that the Presidential misrepresentations with reference to the Cambodian war is excusable because of the congressional and Security Council involvement in the decisionmaking itself. The impoundment of funds by the Office of the President is clearly an exercise of administrative discretion, which is now sharply curtailed by the Congress itself. While the manipulation of the decision to raise milk price supports by the President's advisers in order to reaffirm the pledge of substantial campaign contributions is reprehensible and bordering on bribery by itself, the evidence as to the President's direct involvement has nowhere been established, to the extent, in my judgment, to warrant a charge of impeachment.

While I am seriously concerned about the manipulations of the deed of gift of Vice Presidential papers to the United States, I have real reservations as to whether the degree of Presidential involvement makes him guilty of an impeachable tax fraud.

But I do want to associate myself with the remarks of the gentleman from Illinois, Mr. Railsback, and others and particularly the careful manner in which he reviewed the President's response to the information which came to him in his official capacity, and his participation in the continuing policy of coverup, at least after the 21st day of March 1973. This is clearly a policy of obstruction of justice which cannot go unnoticed.

Likewise, I am concerned about the pattern of Presidential abuse of the power given him by statute and the Constitution. The manipulation of the Federal Bureau of Investigation, the Central Intelligence Agency, the Internal Revenue Service, and indeed the existence of the White House plumbers are frightening in their implications for the future of America.

The misuse of power is the very essence of tyranny.

The evidence is clear, direct, and convincing to me that the President of the United States condoned and encouraged the use of the Internal Revenue Service taxpayer audit as a means of harassing the President's political enemies.

And consider, if you will, the frightening implications of that for a free society.

Mr. Chairman, while I still reserve my final judgment, I would be less than candid if I did not now say that my present inclination is to support articles incorporating my view of the charges of obstruction of justice and abuse of power; but there will be no joy in it for me.

The CHAIRMAN. I recognize the gentleman from Maryland, Mr. Sarbanes, for general debate only and for a period not to exceed 15 minutes. Mr. Sarbanes.

**STATEMENT OF HON. PAUL S. SARBANES, A REPRESENTATIVE IN CONGRESS FROM THE THIRD CONGRESSIONAL DISTRICT OF THE STATE OF MARYLAND**

Mr. SARBANES. Thank you, Mr. Chairman.

We are gathered here to perform a very solemn constitutional responsibility, and that is to apply this document, the Constitution of the United States, to the facts that were placed before us in the course of our inquiry. This document is probably the world's best written exposition of free government. It is the document under which this country and its people have prospered from the founding of this Republic. This is the document which guarantees to each American his right to participate in the making of public decisions, his right to determine his own destiny. It has guarded the freedoms and the liberties of the American people for almost 200 years, and it is precious, precious to every man, woman, and child in the land.

Let us look at what it says. There is only one oath that is set out in the Constitution explicitly for any officer of our Government, and that is the oath which the President of the United States is required to take. The Constitution provides that before the President enters on the execution of his office, he shall take an oath or an affirmation solemnly swearing that he will faithfully execute the office of the President of the United States and will, to the best of his ability, preserve, protect, and defend the Constitution of the United States.

And it goes on further in another section dealing with Executive power, which is vested by the Constitution in the President of the United States, to say that the President shall take care that the laws be faithfully executed.

This duty to take care is affirmative. So is the duty faithfully to execute the office. The President must carry out the obligations of his office diligently and in good faith. He has a responsibility for the overall conduct of the executive branch, which the Constitution places in him alone. And he has a duty to preserve and protect and defend the Constitution; a duty not to abuse his power, or to transgress their limits, a duty not to violate the rights of the citizens of the country given to them by the Bill of Rights; and a duty not to act in derogation of powers vested elsewhere by this fundamental document, the Constitution.

Let us pause for a moment and look at some of the activities that we are considering, and let us think of the President as he relates to the other institutions of our Government and to the people. The President clearly has a responsibility to the courts and the criminal justice system, a responsibility to see that the duty is carried out in that area. And what have we here?

Between April 15 and April 30 the President met seven times with Henry Petersen, talked to him on the telephone 20 times in the 2-week period. Petersen was then acting, in effect, as the Attorney General

of the United States with respect to the Watergate investigation, and was in contact with the prosecutors that were pursuing that matter.

In the series of conversations, Petersen told the President of the information which he was discovering.

On April 16, Petersen and the President met from 1:39 to 3:25 p.m., and he told the President of the allegations against John Ehrlichman with respect to the destroying of evidence. This was the conversation in which the President said to Petersen, "you're talking only to me," and yet, according to the White House logs, 2 minutes after Henry Petersen left the President's office, at 3:27 on that day, the President met with John Ehrlichman and told him what Henry Petersen had related to the President.

John Ehrlichman subsequently left that meeting and began to call other members of the White House staff in order to establish his alibi with respect to the allegations that were being made against him. And this course of conduct continued throughout April, throughout the last 2 weeks of that month.

And then on the 25th of April, H. R. Haldeman, a prime suspect, checked out tapes in order to listen to them. He listened to them on the 25th, he listened to them again on the 26th. That was never reported to Henry Petersen, who was investigating this case.

Let us turn to the treatment of the Congress in this matter with respect to supplying to us the evidence for us to carry forward our inquiry. The gentleman from New Jersey last night referred to certain portions of the transcript, and they were referred to again today by the gentleman from California. The important thing to remember is that the portion of that conversation, which is clearly so relevant that two members of this committee have felt it necessary to refer to it in this debate, the portion of that conversation was not, was not contained in the edited transcripts sent to us by the White House. And we know of that portion because it is one of the conversations for which we had a tape, and this developed from that tape.

On the last day, when the President's counsel made his argument before this committee, he offered to the committee in the course of his summation a 2½-page transcript from a conversation between the President and H. R. Haldeman on the morning of March 22, a conversation which lasted from 9:11 to 10:35 a.m., 1 hour and 24 minutes. The giving to the committee of this 2½-page transcript, followed, of course, an assertion by the President at an earlier time that "the committee has the full story of Watergate, insofar as it relates to Presidential knowledge and Presidential actions. Production of additional conversations would merely prolong the inquiry without yielding significant additional evidence."

Let us turn then to some of the President's own statements in this matter, because underlying all of the constitutional relationships that we may talk about, underlying the President's role as the head of the executive branch of the Government, how he had administered the FBI and the CIA and the IRS and the Department of Justice; underlying his relationship to the Congress; underlying his relationship to the courts and the judicial system; is the necessity for standards of honesty and of truth, and of integrity. Our system of government simply cannot and will not work if those standards are not honored. The

system of free government cannot function if your elected Representatives deal with you in deception and in deceit, and with false statements, because if you are dealt with in that manner, it is impossible, it is impossible for the citizenry to make an informed judgment with respect to the responsibilities of self-government.

Let us take just one example of the President's statements. On April 30, 1973, the President stated to the Nation in an evening address: "As a result, on March 21, I personally assumed the responsibility for coordinating intensive inquiries into the matter, and I personally ordered those conducting the investigations to get all of the facts and to report them directly to me right here in this office. I again ordered that all persons in the Government or at the Re-Election Committee should cooperate fully with the FBI, the prosecutors and the grand jury."

On March 22, the day after Dean made his supposed revelations to the President, the President talked with the Attorney General, Richard Kleindienst. He did not report to him the information he had received of complicity in the coverup, but he told Kleindienst to get working with Senator Baker up at the Senate select committee, to "babysit him, starting in like, like in about 10 minutes."

On March 23, the President spoke with Acting FBI Director Gray, and told him that he knew the beating that Gray was taking during his confirmation hearings. He did not tell Gray of the information he had received, and I have already alluded to the period in April when the President did not reveal to Henry Petersen, then in charge of the investigation, what was happening.

How does that square with an order that all persons in the Government should cooperate fully with the FBI, the prosecutors, and the grand jury?

There are many other instances in which there is evidence, both direct and circumstantial, to support the President's direct involvement. Beyond that, I think careful thought needs to be given to the superintendency theory of James Madison which was expressed by one of my colleagues yesterday evening. You must ask yourself whether a Chief Executive of this land, who surrounds himself at the highest levels with men who flagrantly abuse our constitutional processes, should be called to account for their actions. What concept of government is it if the person at the head is to walk away claiming that he knows nothing, sees nothing, hears nothing, while those closest to him, those that have been referred to as the alter egos, proceed about their destructive business?

Finally, Mr. Chairman, I want to refer for a moment to the argument that's been advanced by Mr. St. Clair in his closing argument, and it's been advanced again here today by some members of the committee. And that is the argument that the proof of the pudding is in the eating. In other words, if you attempt to corrupt an agency, if you endeavor to influence it improperly, but do not succeed, so that in the end the agency does the right thing, then you ought not to be called to account for those efforts to subvert it from its proper constitutional function. That, if you stop to think about it, is a clear instance of sacrificing means for ends. The distinguishing characteristic of our system of government, that distinguishes it from totalitarian systems, is that we do not sacrifice the means for the end, and it is not only the end

result that is important, but the process by which we get there. It is the democratic process that guarantees our freedom to participate in decisions that control how power is to be exercised. That is what distinguishes this governmental system from those that are not free, and do not provide for their citizens a measure of self-government.

Because the officials in the institution did not bend and do wrong does not absolve those who sought to make them do wrong, and I want publicly, I want publicly at this time to thank Mr. Thrower and Mr. Walters, the Commissioners of the Internal Revenue, because they would not bend to the pressure that was brought to bear on them to use the tax system in a discriminatory manner against the citizens of this country, to use it against those who opposed the administration in political debate. I want to thank former Attorney General Richardson, and Deputy Attorney General Ruckelshaus, because they knew that they had made a commitment as to how the Special Prosecutor would function, and they had undertaken that he would not be discharged except for a gross impropriety. They both recognized that that had not occurred, and I want to thank them for standing by that commitment to the U.S. Senate and the American people. And I want to thank Mr. Cox and Mr. Jaworski who have pressed ahead to prove that no American stands above the law, that all Americans are governed by this Constitution, and that the liberties and the freedoms of each of us is dependent on adherence to the Constitution. And I want to thank the thousands of men and women in the Federal service who knew what it meant to do right, and stuck to it, and thereby served the American people.

We are here to make this Constitution a vital document for all of our people and to end, to end the abuse of power, the obstruction of justice, that has gone on to the detriment of the constitutional government.

Mr. DONOHUE. [now presiding]. The time of the gentleman from Maryland has expired.

The Chairman now recognizes the gentleman from Maine, Mr. Cohen, for the purpose of debate only, for a period not to exceed 15 minutes.

**STATEMENT OF HON. WILLIAM S. COHEN, A REPRESENTATIVE IN CONGRESS FROM THE SECOND CONGRESSIONAL DISTRICT OF THE STATE OF MAINE**

Mr. COHEN. Thank you, Mr. Chairman.

Two years ago when I was elected to serve in this capacity as a Representative of the people of Maine, I had no idea that I would be called upon to pass judgment on the President of the United States. It is an assignment that I really did not anticipate or request, but a responsibility from which I cannot retreat whatever the ultimate impact might be upon my own life and that of my family. Every member last evening, and today, has expressed the anxiety with which he has approached this impeachment process and I have shared in that anxiety and that apprehension. I know that Mr. Flowers of Alabama has even developed an ulcer over this particular matter but we take some consolation in the knowledge that throughout the ages men and women have always approached the impeachment process with the

same apprehension and sense of awe. We talked about how good a job our staff has done and indeed, they have. One of the first quotes that I recall reading was from Lord Chancellor Somers back in 1691 when he remarked that the impeachment process is like Goliath's sword, to be kept in the temple and not used but on great occasions, and the question that we have to decide is whether this committee should recommend to the House that that sword be taken from the temple and handed to the Senate in order to protect and preserve the integrity of the Constitution of the United States.

The selection of Presidents occupies a very unique position within our political system. It is the one act in which the entire country participates and the result is binding upon all of the States for 4 years. The outcome is accepted. The occupant of that office stands as a symbol of our national unity and commitment. So if the judgment of the people is to be reversed, if the majority will is to be undone, if that symbol is to be replaced through the action of elected representatives, then it must be for substantial and not trivial offenses supported by facts and not by surmise.

We have had a great deal of debate, and you will hear more, devoted to the question of the construction to be given to that phrase high crimes and misdemeanors. It has been suggested the phrase is limited to violations of statutory crimes. Well, that is an interpretation that I cannot accept because the purpose of that constitutional provision was to prevent the Chief Executive from engaging in the gross abuse of that tremendous power vested in that office, to protect the people against the subversion of the rule of law and of fundamental liberties, no matter how silent or how subtle that subversion may be.

One constitutional scholar very recently in his book pointed out that if the President of the United States were to refuse to appoint any member of the Catholic faith to a governmental position, there would be no violation of our criminal laws, but surely there would be a violation of the Constitution which says there shall be no religious test for office. It is an exaggerated example, perhaps, but I think it makes rather clear that the impeachment process involves a determination as to those acts which strike at the very core of our constitutional and political system that must be judged.

It is within this framework that I have conducted myself in an attempt to search out in a very dispassionate, objective, and nonpartisan fashion for the past 6 or 7 months. A number of people have written to me over those months, calls, letters, asking to place the President on trial immediately based upon what they had read in the newspapers and what they had watched on television but the American system of justice demands much more than that and basic and fundamental fairness to the President demands much more than that. The search for truth has been long and painful but I have not been prepared to put the President of this country through the ordeal of a trial unless the allegations leveled against the President were established by clear and convincing evidence to my satisfaction. And we have had more than 50 allegations leveled against the President and upon examination, investigation, reflection on my part, I found many of them to be simply without any factual support.

Others have been very serious and they have been mentioned before. The secret bombing of Cambodia, the impoundment of funds appro-

priated by Congress, the expenditure of tax dollars for the personal benefit of the President's home in California. But in each of these cases and areas after giving full consideration to all the factors involved, I concluded they would not support the President's removal.

There are two major allegations with which I am concerned which have been articulated much more eloquently than I can today, by Mr. Railsback, Mr. Flowers, Mr. Mann, Mr. Butler, and these involve the area of obstructing justice and the use and abuse of governmental agencies to harass and intimidate private citizens for expressing their political preferences and views.

But I would like to digress just for a moment because you have heard and you will continue to hear a great deal about the evidence, that it is circumstantial in many instances and not direct.

Well, first, let me say that conspiracies are not born in the sunlight of direct observation. They are hatched in dark recesses, amid whispers and code word and verbal signals, and many times the footprints of guilt must be traced with a searchlight of probability, of common experience.

Second, I want to point out that circumstantial evidence is just as valid evidence in the life of the law and that of logic as is direct evidence. In fact, sometimes I think it is much stronger. And the best example that I can give you is the fact that there are 38 members of this committee—they are all well trained, skilled, competent people—who sat here day after day listening to tapes, listening to witnesses, and yet they walked out of these doors into the arms of the press and you had 38 different versions of what expletive the President used when he talked to Dean on March 21, 1973, when he said, "Get it." So you can see that even direct evidence has its imperfections.

But on the other hand, let me give you an example of strong circumstantial evidence. If you went to sleep at night and there was—the ground was bare outside and you woke up with fresh snow on the ground, then certainly you would conclude as a reasonable person that snow had fallen even if you had not seen it.

So let us not labor under the misapprehension that because some of the evidence available to us is circumstantial it is, therefore, inadequate.

I would also like to address myself to some of the remarks made last evening and even this morning. My good friend from New Jersey, Mr. Sandman, correctly held up for you a news magazine which quoted only half of the statement. I happen to think the other half of the statement was equally as bad but aside from that, I think the point he was making was quite accurate and that is that a text torn out of context is a pretext. And I support that principle. I think he is absolutely correct. But I would ask the members of this committee, notwithstanding the fact that we are under the limit and constraints of time, not to engage in the same sort of conduct, not to pick and choose quotes and passages which will support a particular position.

When we talk about whether or not the CIA was being used for improper purposes, let us examine what the President did know as of that time. Consider prior to the time they ever contacted the CIA or had the CIA contacted in his behalf that on June 20, 1972, just a few days after the break-in, he had a phone conversation with Mr.

Mitchell, his former Attorney General. And by a Dictabelt, his own dictation that evening, he indicated that Mr. Mitchell said that he apologized, he was deeply sorry that he failed to keep better control of his employees at CRP. So as of June 20 we know that there was a responsibility accepted and known by employees of the Committee To Re-Elect the President.

Also, consider that on June 20, 1972, a very long conversation between Haldeman and the President during which Watergate was discussed, during which an 18½-minute conversation has been rubbed out by some inexplicable, and perhaps even sinister force. These factors must be taken into account when we consider what motive, what object the President may have had in mind in contacting the CIA.

Let me take it one step further on this particular point. I heard the September 15, 1972 transcript quoted from today and it was indicated, and again I am not ascribing any malevolent motive or evil intent here because we are under very strict time controls, but the impression was given that all the President said on September 15 was, yeah, yeah, and yeah. But I look at page 10 and I read from what the President said: "I want the most—I want the most comprehensive notes on all of those that have tried to do us in because they didn't have to do it." And Dean said, "That is right, they didn't have to do it."

The President says in essence, "Things are going to change and they are going to get it, right?" And Mr. Dean says, "That is an exciting prospect."

So I hope that in the future hours of debate that remain, as we come to this final decision, that we will not quote out of context because Mr. Sandman is quite correct. We must consider the totality of circumstances, all of the evidence, all of the tapes, all of the implications, and all that they imply.

I do not have time to go through and review all of the articles and the allegations that will be of importance to me. I indicated I share the concern of the area of abuse of power particularly, as well as the coverup aspect. But the aspect involving the IRS is of particular concern to me because the American people are unquestionably the most generous in the world in sharing the fruits of their labor. We work hard, we pay taxes and perhaps not always enthusiastically but certainly with the hope and the belief that our tax dollars will be used for legitimate purposes and programs.

The most serious and dangerous threats to our society and liberties occur when those in positions of power undertake to turn neutral instruments of government into agents of vengeance and retribution against private citizens who engage in the exercise of their constitutionally protected freedoms. If we are to have confidence in the concept of evenhanded treatment under the law then we simply cannot condone this type of conduct.

A great many thoughts passed through my mind during the past 6 or 7 months and I have wondered so many times to myself—last night in preparing what I might say to you I was reading through the Federalist Papers and I thought, how in the world did we ever get from the Federalist Papers to the edited transcripts?

It has been said very eloquently by Mr. Flowers, I think, that what is at stake really is the very soul of America and I happen to agree because we are committed to liberty, to equality, to justice, to the



sanctity of the right of privacy, to dignity of the individual, and the question is whether those principles have been placed in serious jeopardy.

Let me say it is not a happy occasion for me or for any of us here. We are not without our failings, without our weaknesses, so we are not entirely free to cast stones as that expression has been used, so I will not pass any judgment upon the President personally. But even though we are not without blemishes or human frailties, that must not prevent us from meeting up to our responsibilities to pass judgment upon the conduct of our elected leaders. I have been faced with the terrible responsibility of assessing the conduct of a President that I voted for, believed to be the best man to lead this country, who has made significant and lasting contributions toward securing peace for this country, throughout the world, but a President who in the process by act or acquiescence allowed the rule of law and the Constitution to slip under the boots of indifference and arrogance and abuse. I have been very impressed with the letters that I have received, thousands of letters that I have received, from my constituents, from all over the country, from the people who are outside these halls right now holding up banners saying "Support the President," and I have asked myself this question: How many men have fallen victim to this plea of loyalty to the President? Mr. Kleindienst, Mr. Kalmbach, Mr. Magruder, Mr. Chapin, Mr. Porter, Mr. Krogh, Mr. Ehrlichman, Mr. Colson, all indicted and adjudged guilty of crimes. In remarks that were submitted to this committee Mr. Colson, I thought, spoke rather eloquently on this point. He said, and I am quoting:

If I have come to no one truth out of the morass known as Watergate it is that in our free society when the rights of any one individual are threatened, the liberties of all of us are threatened. What is done unto anyone may be done unto everyone.

And there is one other man that I think I reacted rather poignantly. That was Mr. Magruder when he was sentenced by the Judge, when he looked up to the Judge and said:

Your Honor, I am sorry, I lost my moral compass. My ambition obscured my judgment. And now I must look into the eyes of my wife and see her pain, in the eyes of my children and see their confusion, in the eyes of my fellow man and see their contempt.

But he said, "America will survive her Jeb Magruders and her Watergates," and I happen to agree with that statement.

Mr. Chairman, the future of America is not dependent upon the success or survival of any one man in public office. And if we believe that the President and the Office of the President are one, then the President's failings become our undoing. I think that no one man should be able to bind up our destiny, our perpetuation, our success with the chains of his personal destiny.

It also has been said to me that even if Mr. Nixon did commit these offenses, every other President—we have heard this argument today—every other President has engaged in some of the same conduct, at least to some degree, but the answer I think is that democracy, that solid rock of our system, may be eroded away by degree and its survival will be determined by the degree to which we will tolerate those silent and subtle subversions that absorb it slowly into the rule of a few in the name of what is right.

Our laws and our Constitution are and they must be more than a pious wish, more than a sanctimonious recital of what we should prefer but will not insist upon because we who hold the public office are more than simply craftsmen and draftsmen who hammer out legislation for the benefit of the people of this country. We are the keepers of the flame, the symbol of this Nation's ideals. And we do the greatest dis-service when we allow that flame to be diminished or snuffed out.

One of the unfortunate things about this entire process is that there are some who would have you believe that the White House has been under unfair and unmitigated assault by this Congress aided and abetted by the liberal press. I happen to think that some of the gravest, the most melancholy of wounds are those that are self-inflicted. And I say that because I am thinking of the doctrines of executive privilege and national security, valuable and viable doctrines that have been tainted because they have been invoked for the wrong reason and they have been dealt a serious blow forever more because you will always have the problem of doubt cast upon the invocation of these doctrines, like some modern day Cassandra. Whenever a President invokes those doctrines in the future it is doubtful the people would really believe him.

Just one final point, if I may, Mr. Chairman.

It has been said that impeachment proceedings will tear this country apart. To say that it will tear the country apart to abide by the Constitution is a proposition that I cannot accept. I think what would tear the country apart would be to turn our backs on the facts and our responsibilities to ascertain them. That in my opinion would do far more to start the unraveling of the fabrics of this country and the Constitution than would a strong reaffirmation of that great document.

Mr. Chairman, I will take this opportunity to say what a privilege it has been for me to serve on this committee under your leadership and under the leadership of the gentleman from Michigan, Mr. Hutchinson, because you have been men of great honor and dedication and above all, you have been very fair to each and every one of us to allow us this sort of participation to express our views.

Thank you very much.

The CHAIRMAN. I recognize the gentleman from California, Mr. Danielson, for purposes of general debate not to exceed a period of 15 minutes.

Mr. Danielson.

#### **STATEMENT OF HON. GEORGE E. DANIELSON, A REPRESENTATIVE IN CONGRESS FROM THE 29TH CONGRESSIONAL DISTRICT OF THE STATE OF CALIFORNIA**

Mr. DANIELSON. Mr. Chairman, throughout the long inquiry which we have conducted, the question most often asked, by the public and by the media, has been: "Just what is an impeachable offense?"

I submit that there probably can be no one answer which is suitable to all occasions and for all times.

The minimum standard of conduct which must be required of civil officers of the United States had best be defined in the context of the events and the times in which the controversy has arisen. The failure

to meet that standards of conduct is, in my judgment, an impeachable offense, or, as I prefer to name it, "impeachable conduct."

I am convinced, however, that impeachable conduct need not be criminal conduct; it need not be a crime; it need not be conduct prohibited by the criminal laws; it need not be an "indictable offense."

It is enough to support impeachment that the conduct complained of be conduct which is grossly incompatible with the office held and which is subversive of that office and of our constitutional system of Government. With respect to a President of the United States it is clear, in my mind, that conduct which constitutes a substantial breach of his oath of office, is impeachable conduct.

Every President takes a solemn oath to support and defend the Constitution of the United States, and the Constitution imposes upon him an affirmative duty to take care that the laws be faithfully executed. Surely no one can argue that a substantial breach of the President's oath of office is not impeachable conduct.

It has been argued here that there is no question that within the totality of the events into which we have been inquiring, many wrongs, many offenses, have been committed. There is no doubt about that—but it has also been argued that there is no evidence that President Richard Nixon had anything to do with those offenses; and that there is no evidence to connect him directly to those offenses. I do not accept that statement. While I do not accept the premise that direct evidence, as opposed to circumstantial evidence, is necessary to prove such a fact—to establish such a connection, I submit that in the case of Richard Nixon there is ample direct evidence to prove the connection.

In this case, the facts we hear most about are those referred to as "Watergate," both the burglary and the long coverup which followed. It is a pattern of conduct featured by concealment, containment, the hiding of evidence, by perjury subornation or perjury and acquiescence in perjury by those holding responsible authority. The coverup activities clearly constitute violations of several criminal laws, including obstruction of justice, which is a criminal offense, a felony, under the laws of the United States.

And we must bear in mind that the coverup was not limited to the events directly flowing out of the Watergate burglary. The leading personalities of the Nixon administration had planned and executed a long series of secret, extra-legal and illegal activities over a period of time commencing as far back as 1969.

But it is contended that Richard Nixon did not know about them, did not acquiesce in them, had nothing to do with them and is free of blame and responsibility. Let us look at the facts.

When the burglars were arrested in the Watergate offices on the night of June 17, 1972, it quickly developed that some of them were employees of the Committee To Re-Elect the President, known as CRP and that they had, until recently, been staff employees at the White House. There was also a large sum of currency, \$3,200, in new, consecutively numbered \$100 bills—and that money was traced back to CRP and to circumstances which clearly indicated a money-laundering operation in Mexico and Florida.

The White House and CRP were concerned that the investigation of the Watergate burglary must stop with the five burglars them-

selves, who were arrested in the premises, and with Hunt and Liddy, the former White House staffers who were soon connected with the burglary and indicted.

Meanwhile, Chairman Wright Patman of the House Committee on Banking and Currency had recognized that the money-laundering activities might constitute a violation of our laws and he announced his plans for an investigation. He promptly gave notice of his plans and issued a list of witnesses whom he proposed to subpoena. They included a number of White House and CRP leaders, including John Mitchell, Mardian, Sloan, Dean, LaRue, Timmons, Stans, and others. The White House was worried. They were concerned that the proposed investigation might reveal the nature and extent of its past covert actions and they resolved to impede and prevent the Patman committee investigation if at all possible.

But how was this to be done? On Friday evening, September 15, 1972, John Dean came back from the courthouse. He went to the President's office in the White House and he met there with President Richard M. Nixon and his Chief of Staff, H. R. Haldeman. Dean reported that the Watergate 7 had been indicted. It appeared that the grand jury had concluded its work and the investigation had been contained and stopped short of the White House. After congratulations on this favorable state of affairs, here is some of the conversation that followed. I quote from the House Judiciary Committee transcript starting on page 11. Don't forget, this is Mr. Dean, Mr. Haldeman and the President of the United States. And let us also remember that Alexander Butterfield, the keeper of the door of the White House Oval Office, has testified that President Nixon knew everything going on within the White House, that he was the master of all that went on there, that everybody else was sort of an alter ego.

MR. DEAN. But Patman's hearings, uh, his Banking and Currency Committee, and we've got to—whether we will be successful or not in turning that off, I don't know. We've got a plan whereby Rothblatt and Bittman, who are counsel for the five men who were, or actually a total of seven, that were indicted today, are going to go up and visit every member and say, "If you commence hearings you are going to jeopardize the civil rights of these individuals in the worst way, and they'll never get a fair trial," and the like, and try to talk to members on, on that level. Uh—

PRESIDENT. Why not ask that they request to be heard by, by the committee and explain it publicly?

DEAN. How could they? They've planned that what they're going to say is, "If you do commence with these hearings, we plan to publicly come up and say what you're doing to the rights of individuals." Something to that effect.

PRESIDENT. As a matter of fact they could even make a motion in court to get the thing dismissed.

DEAN. That's another thing we're doing is to, is—

PRESIDENT. Because these hearings—

DEAN. bring an injunctive action against, uh, the appearance, say—

HALDEMAN. Well, going the other way, the dismissal of the, of the, of the indictment—

PRESIDENT. How about trying to get the criminal cases, criminal charges dismissed on the grounds that there, well, you know—

HALDEMAN. The civil rights type stuff.

The CHAIRMAN. The Chair is going to recess until 4 o'clock.

Mr. DANIELSON. I trust I will get my time back, Mr. Chairman.

The CHAIRMAN. And we are going to ask that the room be cleared.

The gentleman will have his time reserved.

[A recess was taken.]

The CHAIRMAN. The committee will be in order. And at the time of the recess, the gentleman from California had 10 minutes remaining out of this 15 minutes and I recognize him for 10 minutes for purposes of general debate.

Mr. Danielson.

Mr. DANIELSON. Well, at the time of the recess, Mr. Chairman, I was commenting on the conversation between President Nixon and Mr. Haldeman and Mr. Dean in which the President has just indicated that he suggested that the criminal cases against the Watergate burglars might be able to be dismissed on the grounds of civil rights, of potential civil rights violations.

Mr. Dean went on to say:

Civil rights—Well, that we're working again, we've got somebody approaching the ACLU for these guys, and have them go up and exert some pressure because we just don't want Stans up there in front of the cameras with Patman and Patman asking all these questions. It's just going to be the whole thing, the press going over and over and over again. Uh, one suggestion was that Connally is, is close to Patman and probably if anybody could talk turkey to Patman, uh, Connally might be able to. Now, I don't know if that's, uh, a good idea or not. I don't think he—don't know if he can. Uh, Gerry Ford is not really taking an active interest in this matter that, that is developing, so Stans can go see Gerry Ford and try to brief him and explain to him the problems he's got.

PRESIDENT. Uh, what about Ford? Do you think so? [Unintelligible] do anything with Patman? Connally can't be sent up there.

HALDEMAN. [Unintelligible.]

PRESIDENT. Connally.

DEAN. If anybody can do it—

PRESIDENT. [Unintelligible] Patman.

DEAN. But if, if Ford can get the minority members, uh together on that one, it's going to be a lot—

PRESIDENT. That's what I understand, but you see, Widnall—let's take somebody—Gerry should talk to Widnall and, uh, just brace him, tell him I thought it was [unintelligible] start behaving. Not let him be the chairman of the committee in the House. That's what you want? -

DEAN. That would be very helpful, to get our minority side at least together on the thing.

Mr. Chairman, I want to point out, apropos of Mr. Butterfield saying that the President ran the White House, I think it is permissible to infer here when the President is talking to Haldeman and Dean, and then he says, "put it down, Gerry should take to Widnall and, uh, just brace him, tell him I thought it was time to start behaving." This is an instruction. He is running the show. He is directing the show, and he is running right true to form.

Continuing on in this transcript of September 15th:

PRESIDENT. Well, the point is that they ought to raise hell about this, uh, this—these hearings are jeopardizing the—I don't know that they're, that the, the, the counsel calling on the members of the committee will do much good. I was, I—it may be all right but—I was thinking that they really ought to blunderbuss in the public arena. It ought to be publicized.

DEAN. Right.

HALDEMAN. Good.

DEAN. Right.

PRESIDENT. That's what this is, public relations.

DEAN. That's, that's all it is, particularly if Patman pulls the strings off, uh—That's the last forum that, uh, uh, it looks like to could be a problem where you just have the least control the way it stands right now.

And then it goes on to talk about the fact that Senator Kennedy may start an investigation of his own, and then Dean says:

DEAN. We just take one at a time and you deal with it based on—

PRESIDENT. And you really can't just sit and worry yourself.

DEAN. No.

PRESIDENT. About it all the time, thinking, "The worst may happen," but it may not. So you just try to button it up as well as you can and hope for the best. And,

DEAN. Well, if Bob—

PRESIDENT. And remember that basically the damn thing is just one of those unfortunate things and, we're trying to cut our losses.

DEAN. Well, certainly that's right and certainly it had no effect on you. That's the, the good thing.

HALDEMAN. It really hasn't.

PRESIDENT. [Unintelligible.]

HALDEMAN. No, it hasn't. It has been kept away from the White House almost completely and from the President totally. The only tie to the White House has been the Colson effort they keep trying to haul in.

DEAN. And now, of course.

HALDEMAN. That's falling apart.

DEAN. The two former White House people, low level, indicated, one consultant and one member of the Domestic Council staff. That's not very much of a tie.

HALDEMAN. No.

PRESIDENT. Well, their names have been already mentioned.

Then farther along on page 15, the President says:

PRESIDENT. Well, the game has to be played awfully rough. I don't know—Now, you, you'll follow through with—who will over there? Who—Timmons, or with Ford, or—How's it going to operate?

PRESIDENT. Maybe Mitchell should—

HALDEMAN. Well, maybe Mitchell ought to—would, could Mitchell do it?

PRESIDENT. No.

DEAN. I don't really think that would be good.

PRESIDENT. No.

DEAN. I hate to draw him in.

PRESIDENT. Yeah.

DEAN. I think Maury can talk to Ford if that will do any good, but it won't have the same impact, of course, 'cause he's the one directly involved, but I think Maury ought to brief Ford at some point on, on exactly what his whole side of the story is.

HALDEMAN. I'll talk to Cook.

PRESIDENT. Oh, I—maybe Ehrlichman should talk to him. Ehrlichman understands the law, and the rest, and should say, "Now God damn it, get the hell over with this."

HALDEMAN. Is that a good idea? Maybe it is.

PRESIDENT. I think maybe that's the thing to do [unintelligible]. This is, this is big, big play. I'm getting into this thing. So that he—he's got to know that it comes from the top.

HALDEMAN. Yeah.

PRESIDENT. That's what he's got to know—

DEAN. Right.

PRESIDENT. And if he [unintelligible] and we're not going to—I can't talk to him myself—and that he's got to get at this and screw this thing up while he can, right?

DEAN. Well, if we let that slide up there with the Patman committee it'd be just, you know, just a tragedy to let Patman have a field day up there.

PRESIDENT. What's the first move?

And then here at the bottom of that page, the President says:

PRESIDENT. Right, just tell him that, tell, tell, tell Ehrlichman to get Brown in and Ford in and then they can all work out something. But, they ought to get off their asses and push it. No use to let Patman have a free ride here.

Now, Mr. Chairman, I submit that this has to do with the conversation in the Oval Office in the White House in which the thought was to cover up the investigation of the 32, \$100 consecutively numbered

bills that were found in the Watergate burglars' room. When Mr. Dean sat in his chair last week, I asked him:

Mr. DANIELSON. All right. Are you referring at that time, was the subject of the discussion the laundering of funds that went to Mexico and then back to Florida?

Mr. DEAN. That was one of the focuses of the Patman committee, that is correct, and we had no idea what they would unravel.

Mr. DANIELSON. That is the idea. You had no idea what they would unravel if they got into it, is that correct?

Mr. DEAN. If they got subpoena power and the like and got their investigators out, we would have another investigation we didn't know how to handle.

Mr. DANIELSON. It was a can of worms and you didn't know what was on the inside?

Mr. DEAN. That is right.

Mr. DANIELSON. Whose plan was it to have Mr. Rothblatt and Bittman go up and contact them?

Mr. DEAN. This was something given to me by Mr. O'Brien. I believe, that they had been talking to Mr. Rothblatt and Bittman. I had never had a contact with Rothblatt and Bittman, all those came through O'Brien and Parkinson.

Mr. DANIELSON. Now do you know whether they had been talking to Mr. Haldeman or Mr. Ehrlichman?

Mr. DEAN. I do not recall. There is very little I don't report to them. What I reported—

Mr. DANIELSON. Mr. Haldeman was present, according to the record, in this particular discussion. Do you know the extent to which their plan was implemented? And I can state that the report of this committee will show Mr. Bittman acknowledges he was asked to do that, but he declined to do it.

Mr. DEAN. All right. As far as the plan to implement it, I have testified in some detail as to it, as to the plan to block the Patman hearings from ever convening where certain Republicans would not attend and certain Democrats would not vote or take a walk and the like.

Mr. DANIELSON. And that was the purpose of possibly eliciting the aid of Gerry Ford to prevail upon the minority members to take a walk, as you say, or not vote, as the case may be?

Mr. DEAN. That's correct.

Mr. DANIELSON. And, now, the purpose of that in turn was to try to put a quietus on the investigation by the Patman committee at that time?

Mr. DEAN. This concerned us very much down there at the time.

Later on, Mr. Chairman, you will recall that you picked up this line of questioning and you referred back to this testimony and asked, Mr. Chairman, of Mr. Dean "What were your concerns?" And Mr. Dean said:

Well, I don't think they were mine alone, because I had conversations with Mr. Haldeman about this, I had conversations with Mr. Timmons. I had conversations with Mr. Ehrlichman, and with Stans and Mitchell. Their witness list looked like a very great threat if they got—that one problem, the people they might call.

The second was their subpoena power. If they could get their investigators out in the field, we were very concerned as to what they might stumble into. This was another investigation that we were just concerned would get out of control and could possibly unravel what was being tied into a tight little ball.

Mr. Chairman, you will recall that later on when we had Mr. Bittman before us we asked him was he approached, did he approach the Patman committee, and he said yes, he was asked to do so, but, in effect, he said "No thanks, I won't do it." Moreover, the records of the Patman committee and in this House of Congress show that they did receive a letter from Mr. Rothblatt asking that the hearings be deferred for the very reason stated by Mr. Dean and stated in the Oval Office that night.

Now, Mr. Chairman, those conversations to which I have just referred took place in the White House, in the President's own office, the Oval Office, the absolute center of executive power of the United States. That was Richard Nixon, our President, your President and mine, conferring with his Chief of Staff and his Counsel. There they were in the Oval Office, plotting, planning and conspiring together to cover up and contain evidence of violations of our law, to obstruct our system of justice, and to impede a congressional committee in the discharge of its lawful duties, and their planning was followed up by a lot of overt acts. Their efforts were successful. The Patman committee was prevented from conducting its investigation and that, Mr. Chairman, was on September 15, 1972, more than 6 months before March 21, 1973, the date on which the President states he learned for the first time about the coverup operation.

I submit, Mr. Chairman, that this is enough direct and undisputed evidence to support a conviction of conspiracy in a criminal court.

And that connects President Richard Nixon directly to conduct which is a clear breach of his oath of office, and his duty to take care that the laws are faithfully executed.

I have another instance, Mr. Chairman, of direct proof that the President was personally involved in this coverup operation, in this obstruction of justice. You will recall, Mr. Chairman, before Haldeman met with the President on June 23, Haldeman had received a report from Dean that he had had a meeting with Acting FBI Director Gray. Gray had told Dean that the FBI's theories of Watergate included both the theory that it was a political CRP operation, and the theory that it was a CIA operation.

Gray also told Dean of the 32, \$100 bills. Now, this was relayed directly by Haldeman to the President. But the President, nevertheless, passed on the instructions that the FBI should not investigate in Mexico because it might interfere with the activities of the CIA.

Mr. Chairman, my time has expired. But, I respectfully submit that rather than relying entirely upon circumstantial evidence we have direct evidence coming out of the mouth of the President of the United States that he not only condoned but he directed these coverup operations.

The CHAIRMAN. I recognize the gentleman from Mississippi, Mr. Lott, for general debate.

#### **STATEMENT OF HON. TRENT LOTT, A REPRESENTATIVE IN CONGRESS FROM THE FIFTH CONGRESSIONAL DISTRICT OF THE STATE OF MISSISSIPPI**

Mr. LOTT. Thank you, Mr. Chairman.

The CHAIRMAN. For a period not to exceed 15 minutes.

Mr. LOTT. Thank you.

This has truly been an awesome, time-consuming and exhausting task, and I really wonder if any of us here really can appreciate what this moment in history could mean to the future of our country. And while at various points along the way I have really been somewhat disgusted with this committee's proceedings, such as when we spent an hour earlier this week trying to decide not whether or not to have



television cameras, but whether or not to have lights for the television cameras. I must admit in all candidness that it has been very fair and I must take this opportunity to thank the chairman for his consideration of this particular member.

And also, Mr. Chairman, I was particularly impressed with several of the comments that you made in your opening statement last night. And I would like to refer to those.

"Make no mistake about it, this is a turning point whatever we decide. Our judgment is not concerned with an individual, but with a system of constitutional government."

I believe that.

Further quoting: "For almost 200 years, every generation of Americans has taken care to preserve our system and the integrity of our institutions against the particular pressures and emergencies to which every time is subject." And I subscribe to that.

Quoting further:

"The Founding Fathers clearly did not mean that a President might be impeached for mistakes, even serious mistakes."

These quotes I would like to direct some of my attention to. But, first let me go back and put our present situation into the proper perspective. We are now in the final stages of review of some 15 months of the most intensive investigation of any President of the United States, perhaps of any man. The Senate select committee or the Watergate Committee spent some months and over \$2 million in its investigation. The grand jury in Washington, D.C., has spent over \$225,000 in their proceedings since June 1972. The Special Prosecutors have been at their task since May 1973 and at a cost of over \$2.8 million. And the House Judiciary Committee staff of some 100 have been working since January at a cost of over \$1.17 million.

There are reams of paper, thousands of pages, volumes of material, grand jury evidence, other congressional committee investigation papers and transcripts, tapes, logs, handwritten memos, and on, and on and on. The sheer weight in pounds is overwhelming.

Could any man withstand such scrutiny, could any man go through all of this without some evidence of a questionable statement under pressure, or while frustrated, or even without revealing some mistakes? I submit no. And where was the similar counterbalancing presentation of the other side of the story? Was the whole picture revealed properly? Was it in the Senate Watergate Committee? No.

Was it in the grand jury or even in this committee? In this committee the staff was nonpartisan, and I must give credit where credit is due, for a fair presentation, until, of course, very recently and that is understandable. But, except for a last-minute shift in the minority counsel, the arguments against impeachment, the cons, the other side of the story, would not have been presented.

Yes, the President's counsel, James St. Clair, was properly allowed to sit in this presentation of evidence and eventually to participate on a limited basis. His was the only argument on behalf of the President until the last presentation by Mr. Garrison. However, he was the President's counsel, not the committee counsel, not my counsel.

There was not a staff structure for a balanced presentation, in my opinion, and perhaps I share the blame for that.

An interesting aside is the fact that, as I get into procedure, is that last night at 7:30 we received the proposed articles of impeachment, the night the debate began. Quite often we have been faced with being hit at the last minute with what we are fixing to vote on, but regardless of that, we are now preparing to vote on articles of impeachment.

I have tried to maintain a restrained position because I think it has been incumbent upon every member to listen and keep his mouth shut until he had enough to make his decision. But; I must also be frank in saying that I have approached this task from the standpoint that the President was innocent, like any man, under such proceedings, and should be presumed innocent until there was clear and convincing evidence to the contrary. You cannot impeach a President because you don't like his philosophy, or on the basis of innuendo or contradicted evidence.

In my opinion, you cannot impeach a President for a half a case or on the basis of parts of several cases put together.

And we are not faced with impeaching John Dean or John Mitchell, or Magruder or any of these others. We are faced with impeaching the President. The line must be drawn directly to the President, clearly to the President.

This has not been done.

The President had several aides that served him and this country poorly. The legal processes are now dealing with them. But, for every bit of evidence implicating the President, there is evidence to the contrary. What is at stake here is the Presidency, and this is what has worried me all along.

In my part of the country we do worry about these institutions, we do still hold institutions that made this grand country great, dear, and important. We have to consider the best interests of this country now and in the long run. We cannot allow political considerations or circumstantial evidence to be the basis for impeaching the first President of the United States in over 100 years. And I might add, in so many ways, the best President in that period of time.

I think this is a classic example here of how perhaps all of us in this committee have gotten so deep in the forest that we have lost sight of the forest. We are now analyzing every diseased tree and I think we have got to look beyond that.

Let us take a look at a couple of specifics. There is not one iota of evidence that the President had any prior knowledge whatsoever of the Watergate break-in. And I don't want to get into quoting half a passage. But I guess we could do that on each one, one would be quoting something and the other to the contrary and that's my point. So much contradicting evidence.

The President himself, in the transcript of March 13, referred to the Watergate break-in like this. "What a stupid thing, pointless. That was the stupid thing."

The President did not participate in the Watergate coverup. True, he did not immediately throw all possibly involved immediately to the wolves. Would you, without knowing all of the facts dismissed your principal aide?

But, upon learning from Dean on March 21 the real seriousness of what was happening, he started taking a series of actions to find

really what the truth, the whole story, was. The President on March 22 said that Hunt could not demand blackmail money, they just wouldn't go along with that, and he instructed Dean to prepare a report for him of what had really gone on. He never got that report.

The Attorney General was advised to report directly to the President. Members of the White House were instructed to go to the grand jury and to tell the truth. I think it is important that you have got to look at what eventually happened. I think that you must consider the fact that the President waived executive privilege for his closest aides, including his counsel.

That is what really happened.

And we could go on, and on and on.

With regard to Ellsberg's psychiatrist break-in, Charles Colson testified before this committee that he was convinced that the President did not know in advance of the break-in.

I will make no comment on the part of the article that deals with the contempt of Congress charge because I think it is so ludicrous that it deserves no comment.

Now, what is really the genesis of all of this? What was the beginning of the whole thing? Now, I am not saying that or other things weren't important and I had my difficult moments, particularly with the conversation of March 21, which I have satisfied myself that the President did not order that payment.

But, the beginning really was with the bombing of Cambodia and the impoundment of funds. And look at that. The bombing of Cambodia led to the eventual end of the longest war in this country's history. It was one of the important ingredients.

And then impoundment. Presidents have been impounding funds since Thomas Jefferson, and Kennedy and Johnson both percentage-wise impounded more than President Nixon. I think it is interesting in a recent article in the Washington Post of August 2, 1971, where it came out that under the Kennedy administration, through Assistant Attorney General Burke Marshall there was a plan called Stick it to Mississippi, my home State.

"Stick it to Mississippi." Remember that. And what was involved was the impoundment of funds on some three dozen projects to force Mississippi to comply with certain Justice Department decrees and court decrees. It is impoundment. It is impoundment any way you look at it. But, when it is impoundment of some other area, then it is a different horse.

Now, many of those here have talked about the youth of America, and although I have grown much older in the last few months, I guess I am still the youngest member of this committee. And I have been concerned at what impact Watergate would have on the young people of America. But, I think maybe in the final analysis they see all of this more clearly than we do. And I really think the young people that I have talked to, and I have talked to a lot of them, have dedicated themselves to making this system better by working within the system. And no matter what we finally do in Congress, the Presidency will be treated more carefully by future Presidents. So I think we must take care to see that we don't do irreparable damage to the longest single existing form of government in the history of man.

My question, in the final analysis, will be this: As strongly as I, as I disapproved of the policies of President Kennedy and Johnson,

would I have voted to impeach them based on the evidence before this committee.

Thank you, Mr. Chairman.

The CHAIRMAN. I recognize the gentleman from Ohio, Mr. Seiberling, for purposes of general debate only for a period of not to exceed 15 minutes.

Mr. Seiberling.

**STATEMENT OF HON. JOHN F. SEIBERLING, A REPRESENTATIVE  
IN CONGRESS FROM THE 14TH CONGRESSIONAL DISTRICT OF THE  
STATE OF OHIO**

Mr. SEIBERLING. Thank you, Mr. Chairman.

I appreciate your traditional fairness in permitting me to speak out of order. I had to be on the floor of the House in connection with action on a very important strip mining control bill which I have worked on for many months.

Mr. Chairman, I am also at the age where I have to admit that I've got to put on my glasses. I am not the youngest member on this committee by any means.

As we approach a decision, it is well to remind ourselves that those who founded our country 200 years ago foresaw the possibility of the very situation that confronts us today and made provision for it. The power to impeach the President is expressly granted by the Constitution of the United States. The power was given to the Congress by the Founding Fathers for one purpose, to protect the Republic against the possible abuse of powers of the Presidency by a person who had been elected to serve in that office for a fixed term of 4 years.

Other countries, including Great Britain, our parent country, have a different system. There the chief executive can be turned out of office at the will of the Legislature.

Having rejected that system in favor of a powerful chief executive elected for a fixed term, the authors of our Constitution adopted the impeachment process as the necessary and only constitutional procedure for removal of a President prior to the end of his term.

If the Founding Fathers were concerned with the abuse of power by a chief executive in a small fledgling country, how much more would they be concerned today, when the President presides over an executive branch with employees numbering in the millions, is responsible for annually collecting and spending hundreds of billions of dollars, and holds the power of life and death over the people of this country and indeed the entire world.

The authors of the Constitution wisely refrained from specifying the precise actions which would justify impeachment except to indicate that they were "high" crimes and "high" misdemeanors, such as treason and bribery. Clearly, the Founding Fathers were saying that impeachable conduct is conduct that strikes at the very existence of the constitutional system or the integrity of the Government itself.

The nature of their concern becomes even more apparent when we consider the oath which the Constitution requires the President to take before entering on the execution of his office—an oath to "preserve, protect, and defend the Constitution of the United States."

Each of us, of course, as members of the Congress have taken a similar oath. And though each of us may honestly draw different conclusions from the evidence before us, I am sure that we are united in our desire to carry out that sacred commitment.

We are not only charged with protecting the Constitution but, in this proceeding, we are interpreting and applying the Constitution. Our regard or lack of regard for Richard Nixon as a person, our agreement or disagreement with his public policies, our affiliation with his political party or the opposition party should have no bearing on our decision. We are here to consider not what laws or public policies he has proposed or opposed but whether he has faithfully executed the laws that exist.

The President's counsel, Mr. St. Clair, suggested that we ask ourselves what we would do if we had been in the shoes of President Nixon. I agree. I think we should ask ourselves that question. The President's oath of office is not a mandate for perfection but a requirement that he preserve, protect, and defend the Constitution to the best of his ability. We cannot forget that we are all fallible human beings. We must approach with a charitable attitude the problems of any person who bears the awesome responsibilities of the Presidency. But while we should adopt an attitude of charity and humility, the standard which we must follow in weighing the evidence before us must be an objective standard, not a subjective standard.

In my view, Mr. Chairman, the fundamental test in an impeachment proceeding is whether the person occupying the Office of the President has so violated or ignored the limits of the law and the Constitution or has been so derelict in discharging his responsibilities thereunder that to continue him in office would be to undermine the Presidency and thus the Constitution.

Each member of this committee is a lawyer. I am sure that each of us believes that our society cannot endure without a system of law that is generally accepted and believed in by the people. Nothing can do more to undermine respect for the law than disregard for the law by persons holding high office.

Each member of this committee approaches his task with a different background of experience. My own 25 years of experience as a lawyer included work in numerous antitrust law investigations and trials, many of which involved allegations of conspiracy on the part of the defendants. In some cases, my clients were acquitted. In others, I'm sorry to say, they were convicted or pleaded guilty.

In many cases, the convictions were based on evidence that was almost entirely circumstantial. I know of corporate executives who have pled guilty and in some cases have gone to jail when there was only a small fraction of the evidence of their complicity that is before us in this case.

The evidence we have reviewed in this proceeding is overwhelming. We have statement after statement of President Nixon, in his own words, falsifying facts, condoning and even directing a whole spectrum of misdeeds by his trusted aides, ranging from violations of the Constitution to corruption of the Internal Revenue system.

The pattern of conduct revealed by the acts of President Nixon and his associates is unmistakable. President Nixon was obsessed with the

preservation and extension of his own personal power. In the name of protecting his associates and himself, President Nixon was willing to use the powers of the government to destroy anything which he considered an actual or potential threat to his power. To this end he directed the violation of the constitutional rights of American citizens, he directed the coverup of crimes committed by his associates, and he kept as his closest aides men whom he knew had committed crimes against the very government they were professing to serve, and which we are sworn to protect.

This is the one pattern of conduct which is consistent with the entire body of evidence. It is also spelled out in President Nixon's own words. Let's look at a few of them as revealed in the transcript of his tape recordings of his own conversations.

On June 30, 1972, 13 days after Watergate, the efforts of John Dean, John Mitchell, John Ehrlichman and others to block the FBI's investigation of higher-ups in the Watergate break-in appeared to have succeeded for the time being. President Nixon and H. R. Haldeman then discussed having John Mitchell resign as chairman of the Committee To Re-Elect the President. Mr. Haldeman stated to the President:

The longer you wait, the more risk each hour brings. You run the risk of more stuff, valid or invalid, surfacing on the Watergate caper type of thing.

The PRESIDENT. Yes, that is the thing, if something does come out, but we won't—we hope nothing will. It may not, but there is always the risk.

Mr. HALDEMAN. As of now there is no problem here. As of any moment in the future there is at least a potential problem.

The PRESIDENT. Well, I would cut the loss fast. I would cut it fast. If we are going to do it, I would cut it fast. That is my view generally speaking.

The President's expression, "cut the loss," meant, according to John Dean's testimony before this committee, limiting the exposure of Presidential associates to the lowest possible level.

The facts are undisputed that John Dean and others during the first 3 months after the Watergate worked constantly to cover up the facts and to limit the FBI investigation so as not to involve higher-ups. At the end of those 3 months, Dean met with President Nixon on September 15. Here is what President Nixon said to him at the time:

"The way you have handled it, it seems to me has been very skillful because you—putting your fingers in the dikes every time that leaks have sprung here and sprung there."

The coverup continued and succeeded until after the election. But as a famous poet has said, "Ah, what a tangled web we weave, when first we practice to deceive."

By March 21, 1973, Mr. Dean felt compelled by events to reveal to the President that the tangled web Dean and other Presidential aides had woven was starting to come apart. Here was the President's comment on that, again from the transcripts:

"I think it is good, frankly, to consider these various options and then once you, once you decide on the plan, John, and you had the right plan, let me say, I have no doubts about the right plan before the election, you handled it just right. You contained it."—And that is after Mr. Dean told him the details of what he had been doing, in case the President did not know.

"Now, after the election we have got to have another plan, because we cannot have for four years—we cannot have this thing, you are going to be eaten away. We can't do it."

The next day, March 22, President Nixon met with Mr. Dean, Mr. Haldeman, and Mr. Mitchell to discuss the situation outlined by Dean as to the involvement of Dean, Haldeman, Ehrlichman, Colson, Mitchell, and other Presidential aides in the coverup and also the growing threat of exposure of their activities to the Department of Justice.

Here is what the President said on that occasion:

"Now, let me make this clear. I thought it was a very cruel thing as it turned out, what happened to Sherman Adams. I don't want it to happen with Watergate—The Watergate matter, I think he made a mistake, but he shouldn't have been sacked. He shouldn't have been, and for that reason I am perfectly willing to, I don't give a [expletive] what happens. I want you all to stonewall it. Let them plead the fifth amendment, coverup or anything else if it will save it, save the plan. That is the whole point. On the other hand, I would prefer, as I said to you, that you do it," [and here he means stonewalling] "the other way \* \* \* up to this point, the whole theory has been containment, as you know, John \* \* \* and now, now we're shifting."

Now, after that followed some sad language, Mr. Nixon's sordid denunciation of President Eisenhower's concern that he always be clean.

The transcripts go on to reveal Mr. Nixon's preoccupation for the next 5 weeks in the development of the new plan to replace the old containment plan. Mr. Waldie and Mr. Railsback and others have already pointed out that this plan, in essence, was to block the Department of Justice from prosecuting the President's top aides.

Mr. Chairman, faced with this pattern of conduct we cannot escape the fact that what we do here is going to set a standard for the future conduct of the Office of the President. If, with this record before us, we allow this President to remain in office without a full trial of his fitness in the Senate, then the Presidency itself will have been permanently demeaned and degraded and the people's trust in the integrity of our future Presidents will be permanently undermined.

President Nixon wants us to believe that his remaining in office is absolutely necessary to preserve a strong Presidency. The truth is that we will permanently weaken not only the Presidency but our entire constitutional system if we fail to impeach a President who has so flagrantly violated the public trust and his own oath of office.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. I recognize the gentleman from Wisconsin, Mr. Froehlich, for the purposes of general debate for a period not to exceed 15 minutes.

Mr. Froehlich.

**STATEMENT OF HON. HAROLD V. FROELICH, A REPRESENTATIVE  
IN CONGRESS FROM THE EIGHTH CONGRESSIONAL DISTRICT OF  
THE STATE OF WISCONSIN**

Mr. FROELICH. Thank you, Mr. Chairman.

Members of the committee, fellow Americans, we are today traveling an unknown path, a path that may lead to the impeachment, conviction, and removal from office of the first—of an American President of the United States for the first time in 198 years of existence as a

country. The obvious uncertainty that surrounds such an event frightens many Americans. The historical penalty levied against the man removed arouses great sympathy in others. This course of action, now set, regardless of the final outcome, will have a profound effect upon our system of government.

As several other Members have noted, these proceedings are more than a legal process. They represent a political process which includes partisan considerations. As a Republican, loyal to his party, I have been eager to assure that these proceedings be fair. In this regard I have sharply criticized actions or intended actions by the majority of this committee that seemed to me unduly partisan. I have worked to make these proceedings public so that the deplorable series of leaks would not be necessary and distortions of evidence could be avoided.

I have worked for a full slate of witnesses so that the committee could ask first hand about their involvement, and I supported down the line, the active participation of the President's counsel so that there would be every opportunity to rebut incriminating evidence and establish the President's innocence.

Looking back over the whole proceeding, there is no question that partisanship has played a role. The fact that the inquiry has been as even-handed as it has, is due to a considerable degree to the insistence of the Republican Members.

As a concerned American, as a privileged American in public service, I join a Republican President, Rutherford B. Hayes who declared, "He serves his party best who serves the country best." I make my decision on conscience with no regard to political gain or loss or partisan advantage or disadvantage, a decision under the Constitution and laws of this great Nation as I am able to understand and interpret them.

Those of us making the initial decisions here today certainly feel the burden of our task. We are indeed living with history.

I have been told that Mr. Nixon is without morals and on that basis alone he should be impeached. Let me assure you that I am discouraged by the moral tone that shines through tape after tape and transcript after transcript, but that is not an impeachable offense.

Mr. Hungate told us in one of his Missouri parables that because Mr. Nixon's net worth tripled while he was in the White House, he should be impeached. Should Mr. Johnson have been impeached because his net worth increased from \$50,000 to \$33 million while spending a lifetime in government service? No, that fact is not properly an impeachable offense.

What is an impeachable offense? Are all crimes an impeachable offense? I think not.

Are all impeachable offenses crimes? I think not.

It is, to my mind, inconceivable for the Congress to impeach a President for anything less than grave offenses and in most instances these offenses will contain an element of criminality when the evidence of misconduct is very strong. The mandate that a President receives from the American people should not be overturned except for the most extraordinary and compelling considerations.

I agree with both Mr. Doar and Mr. St. Clair that the charges must be proved in clear and convincing terms.



Now, this million dollar staff has searched into every nook and cranny of this administration for every sensational occurrence, every off-color remark, every mistake, every abuse of authority, every statement ever made, to test it for vulnerability as to impeachment. I wonder, ladies and gentlemen, how many past administrations could stand that scrutiny.

This staff, without the direction and control of this full committee, came up with various areas of concern which were briefed or briefed and presented to the full committee. The areas included: Cambodia, impoundment, tax fraud, ITT, dairy fund contributions, San Clemente, Key Biscayne and other personal finances, and that one by one, without any formal action of this committee, after the charge, after the leaks, after pages and pages and pages of print in the press, after words and words and more words on the media, these charges slowly faded into the background without, again, any formal committee action.

Now the articles of impeachment placed before the committee by the majority spokesman, Mr. Donohue, do not address themselves to the above charges.

The charges that survive in the offered articles of impeachment allege in general terms obstruction of justice and abuse of power. One of the more specific charges of abuse of power includes noncompliance with committee subpoenas. This is a case of the alleged absolute power of the President versus the alleged absolute power of the Congress—a classic case of separation of powers.

The President claims constitutional and historic tradition of executive privilege and the Congress claims exclusive power of impeachment.

What reasonable men would not probably place this impasse before the third branch of government, the courts, for final arbitration and decision, both in the interests of either obtaining the information or substantiating the President's compliance or noncompliance under the Constitution? Well, this committee so refused and therefore I must refuse to support an article of impeachment based on this allegation.

An argument is frequently made that even if there is evidence of misconduct on the part of the President, it amounts to nothing worse than the actions of previous Presidents. This is an argument that appeals to many people who are anxious to affirm their support of the President.

I am convinced that some of our previous Presidents have engaged in shady, deplorable and possibly illegal activities. I say this only after I have read some documents I obtained yesterday from the Senate Watergate Committee and which I have turned over to the minority counsel. But past misconduct cannot logically justify more of the same. A Congress interested in preserving and protecting the rights of our people must recognize and condemn misconduct in offices whenever it appears.

And so I am brought to the evidence that troubles me. I shall not discuss it here in all its detail but I must confess that I am deeply pained and troubled by some of the things I see.

I am concerned about obstruction of justice—a coverup plan that began on June 17, 1972, or soon thereafter, and continued, to involve

the participation and knowledge of the President, a plan whose purpose was to save an administration from embarrassment, from losing votes in the November 1972, election, and ended up trying to save the long time loyal aides from being charged with violations of criminal law.

I share some of the same concerns about a coverup as the gentlemen from Illinois, McClory and Railsback.

I am concerned about the flurry of activity that took place in California, Washington, and Key Biscayne, on June 17, 18, 19, and 20 between Mitchell, Mardian, Magruder, LaRue, Ehrlichman, Colson, Haldeman, Dean, and Sloan, and the relationship of what these key staffers were doing to what the President could be reasonably expected to do and to know.

The President is shown to be a man concerned with detail, a man concerned with the salad served at a banquet, or the pictures on the wall at the banquet, a man informed of Howard Hunt's possible connection with the White House, yet a man that we are asked to believe did not demand or receive a clear and true picture of the real situation by June 30, 1972, a man who talks on June 20 about the "risk of something coming out" and about "cutting the loss fast."

Yes; I am concerned about the references on March 21 when the President told Dean: "You had the right plan. Let me say I have no doubts about the right plan before the election. You handled it just right. You contained it. Now after the election, we have got to have another plan."

And where the President told Mitchell on March 22: "The whole theory has been containment."

Yes, I am concerned about a March 20, 1973 order to Dean to "make a complete statement but make it very incomplete." I am concerned about an order to Ehrlichman on April 16, 1973, to make a "scenario with regard to the President's role." I am concerned about the President's telling Dean on March 21, 1973: "Just be damn sure you say 'I don't remember, I can't recall, I can't give an honest answer, an answer to that, that I can recall,' but that is it."

Yes, I am concerned about the way the President passed on to Haldeman and Ehrlichman and through them to Colson the information furnished to the President by Henry Petersen from April 16 to April 30, 1973, after reassuring Petersen on April 16: "Of course, as you know, anything you tell me as I think I told you earlier, will not be passed on."

Yes, I am concerned about the missing tapes, the undelivered tapes, the gaps in the tapes, yes, I am concerned about impeaching my President for his actions. My decision awaits final wording of the articles and the remaining debates.

Thank you, Mr. Chairman.

The CHAIRMAN. I recognize the gentleman from Massachusetts, Father Drinan, for purposes of general debate only for a period of 15 minutes.

Father Drinan.

**STATEMENT OF HON. ROBERT F. DRINAN, A REPRESENTATIVE IN  
CONGRESS FROM THE FOURTH CONGRESSIONAL DISTRICT OF  
THE STATE OF MASSACHUSETTS**

Mr. DRINAN. Mr. Chairman, members of the committee, in the long summer of 1787 at the Constitutional Convention in Philadelphia, the delegates from my own State of Massachusetts consistently opposed the inclusion of impeachment in the Constitution. Massachusetts argued on July 20 of that year that American law, unlike that of England, would provide for a genuine separation of powers, judicial review, and regular elections by the people. Hence it was argued, the remedy of impeachment which had been frequently abused in England would not be necessary in America.

The delegates of Massachusetts furthermore reasoned on that day that impeachment would impose a penalty which would make known to all citizens the punishment that they could expect for their offenses. Massachusetts in that year wanted America to aspire to the ideals already stated in the constitution of Massachusetts, "a Government of laws and not of men."

Only South Carolina voted with Massachusetts to omit impeachment from the Constitution. Massachusetts then, as so often since, stood almost alone.

During this summer, Mr. Chairman, I have wondered countless times whether or not the delegates from Massachusetts in 1787 were after all correct in their judgment that impeachment was unnecessary, unwise, and indeed dangerous.

My concern over this question has deepened as I have witnessed the process of selecting articles of impeachment on the basis of whether they will fly.

I have been troubled because the process of choosing articles of impeachment is not necessarily done in the order of their gravity but to some extent on their capacity to "play in Peoria."

There has been no shortage of lawless acts on which to focus in this inquiry. But only history will discover why the greatest deception and possibly the most impeachable offense of Richard Nixon may not become a charge against him. I speak of the concealment of the clandestine war in Cambodia. I do not here speak of the claimed merits of the bombing. I speak only of its concealment. We see in this series of events the same abuse of power and the same techniques of coverup employed by the President and his associates in the aftermath of Watergate.

Like the gentleman from New York, Congressman Henry Smith, I am profoundly disturbed at the massive coverup of the facts during and after the secret bombing raids where 3,695 B-52's went over Cambodia during a period of 14 months, from March 1969, to May 1970. I remember well my absolute consternation on July 16, 1973, when the Cambodian bombings were revealed for the first time. I learned then that President Nixon had misled me and misled the entire Nation when he said 3 years prior to that time on April 30, 1970, that "For the past 5 years we have provided no military assistance whatever and no economic assistance to Cambodia."

The calculated coverup of Cambodia, like the coverup of Watergate, unraveled by accident. We heard of it in the Congress and in the country because a foreign correspondent reported on his discovery in Cambodia of the thousands of craters made by American B-52's.

There was, in my judgment, no justification for maintaining secrecy about that war. The only reason for the deception of Congress and the country was the President's political objective of deceiving and quieting the antiwar movement. Prince Sihanouk knew, the Cambodians knew, the North Vietnamese knew, everyone knew except the people of America and this information was withheld from them until it happened to come out. The only reason for the deception of Congress and the country was the President's political objective of deceiving and quieting the antiwar movement.

The President orchestrated a conspiracy to keep the lid on Cambodia until at least after the election in 1972. The facts of this Presidentially directed conspiracy do not come from taped conversations or circumstantial evidence or mere inferences. They come from the testimony of General Earle Wheeler, head of the Joint Chiefs of Staff. He testified in July 1973, that the President told him not once but "at least a half dozen times" that the bombings of Cambodia must never be revealed. General Wheeler also acknowledged that the Pentagon was following the President's command of secrecy when the President invented the deceptive system of dual reporting by which air strikes in Cambodia were recorded as having occurred in South Vietnam.

James Madison stated that the power to declare war vested by the Constitution in Congress must include everything to make that power effective in the Congress.

Congress and Congress alone had the right and duty to judge whether the United States was justified in making or not making war on Cambodia. President Nixon, in my judgment, usurped that right from the Congress.

Can we be silent about this flagrant violation of the Constitution? Can we impeach a President for unlawful wiretapping but not impeach a President for unlawful warmaking? Can we impeach a President for concealing a burglary but not for concealing a massive bombing? Many deceptions were carried out on the Congress itself.

In April 1970, the Secretary of the Army told a Senate subcommittee that no military aid had been given to Cambodia. In May 1970, General Wheeler gave misleading if not false testimony to a committee of this House. In May 1971, the Secretary of the Air Force reported to the Senate that no bombing strikes had occurred in Cambodia prior to May 1, 1970.

Those who assert that the President had the power to bomb Cambodia in the way in which he did it and keep it secret for years have the burden of justifying (1) the deception of Congress, (2) the falsification of documents, and (3) the statement of Melvin Laird, then Secretary of Defense, to the effect that the air raids over Cambodia should have been revealed in May 1970.

Do these persons have an answer to the statement of Senator Stuart Symington, acting chairman at that time of the Senate Armed Services Committee, that the Congress authorized \$130 million for warfare in Vietnam and not in Cambodia?

In and around my congressional district in eastern Massachusetts there live the descendants of those who fought at Concord and Lexington. Those American revolutionaries two centuries ago took up arms in a desperate and determined effort to gain the precious right of knowing and participating in the processes of their own Government.

The men who fought in the revolution at Concord and in the other 12 colonies gathered in Philadelphia from May 25 to September 17, 1787. They came together to create a Government where no one ever again would have to enter into an armed rebellion to indicate his right to be free of tyranny, and for the Framers of the Constitution the ultimate tyranny was war carried on illegally by the Executive without the knowledge or consent of the Congress.

Mr. Randolph of Virginia stated in the Constitutional Convention that the President under the Constitution that they were writing would have great opportunities of abusing his power, particularly in the time of war.

Against that ultimate tyranny, the authors of the Constitution adopted impeachment as the ultimate remedy.

Within 1,000 days we as Americans will commemorate the 200th anniversary of that fight for freedom that began on the rude bridge at Concord. We will be worthy of those who fought on our behalf in 1776 if we fight for the rule of law as they set it forth in what is now the oldest written constitution still in use in the entire world.

Finally, Mr. Chairman, we will be worthy of those who brought freedom to America only if we continue to remember as we have in this inquiry that impeachment is designed as the one way by which a President can vindicate himself. Col. George Mason reminded the Framers of the Constitution that the impeachment proceeding is designed to vindicate the rights of the people against a tyrant but it is also provided so that there will be honorable acquittal for a public official should he be unjustly accused. Whatever the outcome of this proceeding, the American Government will be purified and strengthened and in that process all of us will become as never before free men in a free society.

Thank you very much.

The CHAIRMAN. I recognize the gentleman from California, Mr. Moorhead for purposes of general debate for a period not to exceed 15 minutes.

Mr. Moorhead.

#### **STATEMENT OF HON. CARLOS J. MOORHEAD, A REPRESENTATIVE IN CONGRESS FROM THE 20TH CONGRESSIONAL DISTRICT OF THE STATE OF CALIFORNIA**

Mr. MOORHEAD. Mr. Chairman, I wish to join my other colleagues in commending you for the manner in which you have presided over these hearings.

I believe you have been fair to the Republican Minority in recognizing them and calling on them when their turn has come to speak.

I believe that on some issues we have been successful in improving the quality of these hearings and resolutions which the minority has supported and which have been adopted by the full committee.

I do wish, however, to express very strong exception to the manner in which the staff on some occasions have handled these hearings. For one thing, I believe that the decision was made early that instead of calling witnesses under subpoena to take their deposition, the staff determined that instead they would call only those people who wanted to volunteer to be called and to have an affidavit presented to the committee.

Now, I understand the reason for this is because they did not want the President's Counsel having the right of cross-examination, which I believe was absolutely necessary in order that the committee get a well-rounded version of what had happened.

Any witness that is not subjected to cross-examination certainly is able to supply self-serving testimony.

I believe also that the staff was incorrect in the decision that they made not to call a larger number of witnesses before this committee for the committee's interrogation. I read most of the material in the 39 volumes that have been presented to us. I am not going to say I read every single word. I think I read 95 percent of it. It was voluminous. It can take you days just to get through it.

But most of the materials that were contained in those volumes were testimony from other hearings, opinion, memoranda that had been secured from one place or another, hearsay evidence, materials that would not be admissible in a court of law, and I want the testimony and the affidavits and the materials that we consider to be such that it would be admissible in a court of law and something which we and the American people could count on for its validity, and I just do not believe that the contents of those 39 volumes can be judged in that manner.

We had nine people that appeared before this committee. We had some very important witnesses, although there were some very important ones that we did not have.

I thought two or three of those witnesses were exceptionally candid and valuable to these hearings.

I thought Mr. Colson did an excellent job in presenting his point of view to our committee and in covering a great deal of ground that we needed to know about before we made a decision, and in the end his testimony was almost all exculpatory of the President.

The only area where there was any question about Presidential responsibility was that the President had ordered Mr. Colson to release materials pertaining to Mr. Ellsberg and it is true that Mr. Colson later pled guilty to the charge of obstruction of justice on the grounds that he did release such materials. But Mr. Colson testified to this committee that every single word that he released was true and that the reason for releasing that material was that Dr. Ellsberg was engaging in a battle in the press against the administration to deceive the American people and that it was necessary for the administration to bring out their side so that the people would have a full picture of what was going on.

Mr. Ellsberg's trial did not take place until 20 months later. And Mr. Colson in giving the reasons for his plea told us that he was so concerned with the rights of a defendant to have a free trial that he wanted to be able to come to this committee and tell us everything he knew without jeopardizing his trial and by making an example for

anyone who, in the public print, would hurt any defendant who had been indicted prior to trial.

I would submit that half of the press of the Nation would be in jail if that were a criminal offense for which a person could be guilty.

I was also impressed by the testimony that was given by Mr. Butterfield. He talked to our committee about his job in great detail, about where his particular office was in connection with the Oval Office, and it happened to be right outside the door. Mr. Butterfield's job, among other things, was to carry all of the materials that the President was to see for that day into the President's office, and act more or less himself as an in box and to also get all of the material that the President was sending back out with his notes and comments that he had made during his perusal of whatever materials there might be. And Mr. Butterfield, when interrogated, testified that he had this total access, and he also testified that he knew of no instance in any of the materials that he had seen or anything that he had heard of any involvement by the President in the Watergate before it happened, on questioning, or was involved in any coverup.

And he said: "Oh, no, absolutely not. You are correct."

We have other testimony that exonerates the President insofar as culpability. Mr. Mitchell was testifying before the committee as a live witness and he was asked by Mr. Doar:

And during that discussion with the President did you have any discussion with him with respect to this payment to Mr. Hunt for attorney's fees?

Mr. MITCHELL. Absolutely not. Attorney's fees? Absolutely not.

Mr. DOAR. And did the President say anything to you about that?

Mr. MITCHELL. No, sir.

Mr. DOAR. Had you on previous occasions discussed with President Nixon the fact money was being paid to the defendants?

Mr. MITCHELL. No, sir.

Now, Mr. Mitchell was the man to whom LaRue turned for permission to pay the last \$75,000, and apparently from the testimony and whether it was on the 20th or the 21st of April is not totally—I'm sorry—is not totally clear. But Mr. LaRue had come from Mr. Bittman's offices where he had talked to Mr. Hunt, and to Mr. Dean, and asked his authorization to pay the \$75,000. Mr. Dean told him he wasn't dealing with money matters, that he would have to talk to Mitchell.

LaRue told Mitchell that some more money was needed for attorney's fees, \$75,000, and another sum for the maintenance of the family of Mr. Hunt while he was in prison. Well, the total amount was rejected, and the figure of \$75,000 was approved by Mitchell, with the assurance that it was for attorney's fees.

Now, Mitchell's testimony that he did not talk this over with the President, the President didn't know, and then going to Hunt's or to Dean's conversation with the President immediately following, which was the first time that the President of the United States had been thoroughly briefed on what had been going on, supposedly Dean failed to tell the President this very important fact. Now, I would submit to you that Dean's testimony, outside of the tapes, is the most damaging bit of evidence against the President, and yet Dean has failed to tell the truth so many times during these proceedings, not just to us, but in other hearings, that you almost lose count.

For instance, we were told by Mr. Petersen, under oath here before the committee, and his testimony was very good, that on December 22, 1972, he had interrogated Mr. Dean for 3 solid hours as to what had happened to the contents of Mr. Hunt's safe.

Dean told him about the things that had been turned over to Mr. Gray, told about the things that had been turned over to the Attorney General's Office, but absolutely denied any knowledge of anything further, including these notebooks that were missing and discussed in the press.

Then Mr. Dean, apparently some time between that time and the time that he appeared before the Senate Watergate hearing, although the exact time is not clear to me, Dean got these two notebooks out of a safe and destroyed them.

He appeared before the Watergate Committee, told them absolutely not one single word about this most important fact of his personal involvement, and when he came to our committee, he told our committee that he had destroyed those documents, and when asked why he hadn't told the Senate Watergate Committee, he said it wasn't in his consciousness at the time.

How could a man forget something so very important of his own personal involvement when he remembered everything else under the sun?

And how can we believe him in the testimony that he's given against the President of the United States when he, as the President's personal counsel, didn't bring him up to date fully about Dean's personal involvement and about the most important fact that steps were in motion to pay this \$75,000?

I know we all are seeking the truth, and I am most concerned that we do everything possible to make this Government the most honest Government on Earth. I believe in a high moral standard for a Government and for our President and for our Congressmen. It is a matter of the highest concern to me.

When I make my decision on the matter of impeachment of the President, I want to make a decision that I can live with for the rest of my life, because I fully believe that this decision is far more important than my political career. As all of us have, I have had many threats from people who want impeachment, saying that they will walk the streets against me if I don't vote for it. But when I consider how I am going to vote on this matter and know how important it is to me and the country that we make the right decision, I have to kind of look to see what kind of a man I think Richard Nixon is and to see who I believe in these proceedings. I have to be sure that the testimony that's been offered has a strong enough probative value to convince me that he had been guilty of a major crime against this country.

In each instance as we get back down to the final point, there is a big moat that you have to jump across to get the President involved, and I cannot jump over that moat. I know it would be easy to vote for impeachment here tonight; everyone here practically is saying they are for it. It is hard to be against something that so many people are for, when the press is united before it, when the magazines are, the media of all kinds, and a majority of the American people apparently go in that direction. But I could not vote for impeachment and give up what is so important to me, which is my own conscience of what I



believe is right and wrong. And I believe that this thing is wrong. And I believe that to come to the conclusions that the staff have come to, they have had to be guilty of coming to a false conclusion in so much of these individual instances.

I don't agree with our chairman when he says there is only one side to this case. There are two sides, and the most important virtue of our country, of our Constitution, is the right to take a different point of view, the right to stand up for the thing that you believe in. I don't criticize any of my friends who have come to another conclusion. But I think that the President of the United States has in most instances, although I deplore any element that we here see in the tapes of any lack of moral knowledge or feeling in some instances, but I believe that the President of the United States has tried to come to the best conclusions that he could for our people.

I don't stand for any coverup. I think the coverup is wrong. I think the men that have been convicted of these crimes should be convicted. I don't think we can ever keep things from our people.

It is perhaps, as all of us have said, the most important and most tough moment of our lives as we go over all of these matters and I listen to the arguments on both sides. But I have heard these tapes and then I have watched to see what's happened later, and in so many instances in listening to the tape, you are dead sure something is going to happen and exactly the opposite takes place. The President orders Kleindienst to fire the man in charge of the ITT case. And what happens 2 or 3 days later, the appeal is taken, and the individual who is going to be fired wanted to do and they go forward and a decision is made by an agreement with ITT that's absolutely contrary to the interests of ITT, and it goes absolutely in the other direction.

Thank you for hearing my point of view. I hope and I pray that God guides this committee to make a right decision for our Nation's future. Thank you.

The CHAIRMAN. The time of the gentleman has expired.

The committee will recess, since there are going to be a series of votes on the floor on the strip mining bill, and rather than interrupt the next speaker, I think we would recess until 8:15.

[Whereupon, at 5:25 p.m., the committee was recessed, to reconvene at 8:15 p.m. this same day.]

#### EVENING SESSION

The CHAIRMAN. The committee will be in order.

And I recognize the gentleman from New York, Mr. Rangel, for purposes of general debate for a period not to exceed 15 minutes.

Mr. Rangel.

#### STATEMENT OF HON. CHARLES B. RANGEL, A REPRESENTATIVE IN CONGRESS FROM THE 19TH CONGRESSIONAL DISTRICT OF THE STATE OF NEW YORK

Mr. RANGEL. Thank you, Mr. Chairman. And may I first thank you on behalf of the younger members of this committee, or the newer members, rather, for giving us the opportunity to fully participate in these proceedings as we collectively search for the truth. I would like

to thank our professional staff, if for no other reason than being able to survive being the employees of the 38 lawyers. Mr. Doar, Mr. Jenner, and Mr. Nussbaum, Mr. Davis, and more especially Mr. Dick Cates, who met with us so often in the early mornings before the hearings, during our lunch breaks, and in late evening after the hearings were over.

Of course, our own Jerry Zeifman who has worked so closely with the Judiciary staff.

I would like to thank Mr. Garrison who, pardon the expression, played the devil's advocate, as he attempted to punch holes in the evidence that was before this committee. But, I suppose I reserve as a very special word of thanks to my colleagues on this committee because they more than the subject matter of this inquiry, has made it clear in my own mind the deep thought and the deliberations that are really necessary in order for us to make a decision in this case. And perhaps while we may differ on the standards to be used to impeach a President of the United States, I think we have never really disagreed that in the final analysis it would be an individual decision as to what that standard is and one that we must live with in being morally right, and legally constitutional.

In going to the other side, the Presidency, I assume one of the first places to look to see what was the most dramatic thing we heard on the President's side was when Mr. St. Clair came before this committee in his summation and brought to us a piece of evidence that we had never heard, but he had indicated that it was a transcript of a March 22 conversation that the President was having with Mr. Halderman. He said that this conversation would make it clear that the President of the United States was not involved in paying off hush money, but rather was involved in a mission of compassion.

I take time to point out what happened on March 21, 1973, a tape which we were fortunate enough to get, where Mr. Dean is talking to the President of the United States in the presence of Mr. Halderman, and they are talking about the Watergate defendants, the burglars, that were stonewalling it. And Mr. Dean says, "They are going to stonewall it as it now stands, except for Hunt. That's why the leverage is his threat."

Haldeman said: "This is Hunt's opportunity."

Dean says: "This is Hunt's opportunity."

And the President responds: "That's why your—for your immediate thing you've got no choice with Hunt but the 120 or whatever it is right?"

Dean responds: "That's right."

The President says: "Well, you agree, that's a buy-time thing. You better damn well get it done but fast."

Dean responds: "I think he ought to be given some signal anyway."

The President says: "Yes."

And Dean says: "You know."

And the President says: "Well, for Christ's sake, get it in a way we will—well, who's going to talk to him, Colson? He's the one that's supposed to know."

Mr. St. Clair would have us believe that Mr. Dean is saying "he should be given some signal" and the President is saying, "Yes, for Christ's sake get it," and that the President was talking about the sig-

nal. But, Mr. Dean's next remark, "Well, Colson doesn't have any money, though," and if we are talking about a signal, Mr. St. Clair said on national television that he never thought it important enough to ask his client, the President of the United States, what signal he was talking about. But, if, in fact, this dramatic piece of the evidence that we have on the March 22 conversation which took place from 9:11 in the morning to 10:35 that same morning with the President and Mr. Haldeman, if, in fact, in this conversation it is going to really make it clear in our mind what the President was thinking about, then I ask the President and his defenders to walk with me through this piece of evidence and try to find out where the truth of the statement lies.

First of all, the President is talking about Liddy and the judge giving him 35 years. It is clear that the defendants were not sentenced until the next day, March 23. But, assuming that this is an accurate transcript and assuming that the President in his wisdom would not answer our subpoena, the President's response to our subpoena that this had nothing at all to do with Watergate, his counsel comes and says it has everything to do with Watergate and it exonerates our President.

The President says there's got to be funds. "I am not being—I don't mean to be blackmailed by Hunt. That goes too far. But, taking care of these people that are in jail, my God, they did this for—we are sorry for them. We do it out of compassion."

I ask the defenders of the President, and the President of the United States, why is my President talking about paying \$120,000 to any common burglar? I ask why is it that my President was authorized to discuss the payment of over half a million to common burglars? And I submit that if the President is talking about compassion, that if the President had nothing to hide, and the burglar could not threaten him and the threat was easily forgotten, that indeed, if the President has any compassion, there are thousands of poor people in our jails throughout these United States who have a better case than Howard Hunt.

What is really more amazing about the activity of my President is his concern as to when the last payment was made to the lawyer of the burglar. Mr. Colson came before this committee and said the President telephoned him three times. His concern was not national security, the welfare of our country. It was Chuck, when was the last payment made to the lawyer of the burglar, Howard Hunt. And he was impatient with the call being checked out, and he called back and again, he said have you checked with the lawyer, do you know what date it was. And finally he got an answer he didn't want to hear and he says he has changed his story obviously and that's why he is not indicted.

Why must my President, with all of the matters and problems that he is faced with, with the domestic problems and the foreign problems, why should he be concerned when the last payment has been made for humanitarian, compassionate, or any other reason, made to a man that's been convicted of burglary?

Some say this is a sad day in America's history. I think it could perhaps be one of our brightest days. It could be really a test of the strength of our Constitution, because what I think it means to most Americans is that when this or any other President violates his sacred oath of office, the people are not left helpless, that they can, through

the House of Representatives charge him, and his guilt will finally be decided in the hall of the U.S. Senate.

What is really sad about this thing is that morality is no longer expected in Government. Indeed, it would not have been sensational news that my President, the President of the United States, decided to obey an order of the U.S. Supreme Court. That should not have been news, because I can't consider that any other citizen of the United States would even have thought about defying such an order from the highest Court in the land.

I would be less than honest if I said that tonight I come toward this vote of impeachment with a heavy heart. Indeed, I would be very sad if this process was not available to me and to the American people. I no more thought about how I would vote against Kennedy or Truman or Johnson than I thought about how I would vote against Washington, Jefferson, or Lincoln. The facts in this case did not allow me to allow my consideration to rise that high. But, somehow it suffices to say that none of these men, to my knowledge, was charged.

On November 7, 1972, Richard Milhous Nixon won reelection in a campaign that was dedicated to the restoration of law and order in our streets. And shortly thereafter, he was sworn in as 36 Presidents before him and said that he would faithfully execute the laws of our land. One wonders what was going on through President Nixon's mind as this solemn oath was being administered. Was he thinking about the opportunity he would have in the next 4 years of his administration to heal the wounds of the people in this Nation, to bring together at least in some small part the hopes and dreams of millions of Americans? Was he thinking about the aspirations of our young and of our aged and the needs of our poor people, white, black, other minorities? I think not, because this President held secret the knowledge that he had participated in the most bizarre criminal conspiracy ever recorded in the history of the United States.

The plan had worked. The Watergate burglars were not talking. The Patman congressional committee was stymied, as Congressman Danielson pointed out. The FBI had been interfered with by the CIA, as he directed them to lie, and said that the investigation would hurt them rather than the White House. And Pat Gray was so frightened that he called up the President on July 6 and said that his trusted aides were wounding, mortally wounding the President.

But, the President did not respond and ask who. He did not ask the facts. The record clearly indicates that on that cold morning when the President took the oath, he had been in conference with the people that were involved, with Haldeman and Colson, at least six times during the 2 days following the break-in, and yet he never asked them any questions. Why we will never know. The tapes will not be given to us. One tape we did get. There was the tape that we got of the conversation that the President had with Mr. Haldeman, but it is surprising that that tape reached Camp David while President Nixon was there with Rose Mary Woods, and when we got it, we got the 18½-minute gap.

He talked about the facts being investigated, and yet we know that Dean was never asked to investigate. He said that Mitchell was investigating, and Mitchell wasn't digging for the truth, but rather covering up the truth.

These facts may have never been known to the American people had it not been for the actions of an alert night watchman named Frank Wills who caught the burglars in the act or the courageous judicial courage of the son of an Italian immigrant family, Judge John Sirica, who suspected the nature of this plot.

And the professional couriers of the men appointed by Mr. Nixon to assist him, some of them were ruthless, others were blindly dedicated, but all of them held themselves above the law.

John Mitchell, former Attorney General of the United States indicted. H. R. Haldeman, assistant to the President indicted. John Ehrlichman, assistant to the President convicted. Charles Colson, special counsel to the President convicted. John Dean, counsel to the President convicted. Jeb Magruder convicted. Krogh convicted. LaRue convicted. Chapin convicted. Mardian indicted. Gray resigned, Kleindienst convicted.

I just say that the President himself is named as an unindicted coconspirator, and that this oath is really a sacred thing that he took. It allows the people of all races in this country to really believe that this country belongs to them. It is an oath that is taken by the highest and the lowest in this land and it is taken by privates and generals and it is an oath that says that we will defend our country against all enemies, foreign or domestic.

Many people who have died have not been heroes, those that fought in the War of 1812 and those that died next to me in Korea, but they died not because they wanted to die. They wanted to live. But, they did believe in that oath. If this oath is becoming meaningless, if this young country would have lost one of its richest resources, the faith and the confidence of its people, any nation worthy of this beginning cannot allow its treasure, its moral strength to be spilled over on the ground on which we live, for if we allow evil to be uncorrected, then it would spread and stain this Nation and its people forever, and our past will be meaningless, and our future will be nought.

We meet the real challenge tonight. We don't hear anything about truth, morality, the protection of our Constitution in any of the Presidential conversations, whether they be in the tape or whether they be edited transcripts. But, we hope that our Nation's White House will never again have to hear all of the sordid crimes that have been committed by the President and other people, and I would uphold my oath of office again and call for the impeachment of a man who has not.

I yield back the balance of my time.

The CHAIRMAN. I recognize the gentleman from New Jersey, Mr. Maraziti, for the purposes of general debate only not to exceed a period of 15 minutes.

Mr. Maraziti.

**STATEMENT OF HON. JOSEPH J. MARAZITI, A REPRESENTATIVE  
IN CONGRESS FROM THE 13TH CONGRESSIONAL DISTRICT OF  
THE STATE OF NEW JERSEY**

Mr. MARAZITI. Thank you, Mr. Chairman.

Mr. Chairman and my colleagues, I know that many of us on this committee have different views. I respect the members of this committee and I respect their views.

Each of us must view the facts and the law as we see and understand them and each of us must and I hope will make the final decision as our conscience dictates.

It is apparent from what we have heard that Members of the Committee to Re-Elect the President and members of the White House staff—yes, even prominent members of that White House staff—have been involved in illegal, criminal activities, as the gentleman from New York has just mentioned. But let me say that I condemn their illegal actions and those who are guilty should, and I am sure will be properly punished according to law. But what is the issue here? We are dealing with a constitutional provision relating to the possible impeachment of the President of the United States and his removal from office.

We must examine the facts in regard to his possible commission of the offenses of treason, bribery, high crimes and misdemeanors.

I am pleased that Mr. Doar, Chief Counsel for the Majority, and Mr. St. Clair, Counsel for the President, both agree that the proof before this committee must be clear and convincing.

I realize that our vote on this committee is to consider the recommendation of impeachment to the House of Representatives, and I realize also that this committee and the House are not charged with the responsibility of finally deciding the case. This function belongs to the U.S. Senate.

But, Mr. Chairman, I feel that we should settle for no less than hard evidence that the President has committed an impeachable offense.

Because in the process of impeachment it is our responsibility if the House votes impeachment to act as managers of the case against the President before the Bar of the U.S. Senate—to act as it were as prosecutors of the case and in that instance we must present to the U.S. Senate not suspicion—not theory—not probable cause—but hard evidence to establish the guilt of the President.

Now, if this committee has labored, and it has, and the staff has labored hard for 7 months, there has been a thorough investigation, Mr. Moorhead has pointed out, and if it does not have this hard evidence at this time and moves this case to the Senate, how can we produce and find the hard evidence in the next 3 or 4 weeks when we are required to present the facts to the Senate for consideration?

I would like to say that we have accumulated a tremendous amount of information, a vast mass of information. Some of it is relevant. Much of it is not relevant. And I must say that in many areas there is a lack of conclusiveness—a lack of certainty and a lack of the kind of evidence we ought to have if we seek to remove the Chief of State of this Government—the kind of evidence we ought to have if we, the House and the Senate—a total of 535 people, if we are to remove the President of the United States, elected by over 47 million people.

This uncertainty has, I believe been engendered by the failure of this committee to:

1. Provide from the beginning for the calling of live witnesses. We did call witnesses, a total of nine, but at the end of the proceedings.

2. Why haven't we called other witnesses? Why haven't we called E. Howard Hunt? He must have plenty of information to give us. He is the man who wanted the money and he is the man who received the money and yet, the motion of Mr. Dennis to call Mr. Hunt was ruled out of order.

3. Why have we not availed ourselves of the device of written interrogatories to the President requiring and requesting him to answer a number of questions under oath and we know that this attempt by Mr. Wiggins to provide this method of evidence was not accepted by the committee.

It is inconceivable to me that this committee, concerned with the most important proceedings affecting this Nation in over 100 years did not follow the Rules of Law and Rules of Evidence, recognized as fundamental to the American system of justice and jurisprudence and beyond that the basic jurisprudence of civilizations for thousands of years.

We have mountains of hearsay and innuendos and ex parte evidence, and we even have newspaper clippings, newspaper clippings as part of our evidence, on which we are asked to make a judgment.

We have resorted to ex parte affidavits, and this was an interesting development and a very interesting device. At one point, if you recall, the staff was about to use oral depositions, and in fact did use one or two oral depositions in the examination of witnesses, but when the question arose as to the participation of Mr. St. Clair, counsel for the President, then the oral deposition was adroitly and quietly and almost secretly dropped and witnesses were examined ex parte in affidavit form.

Mr. Chairman, I don't quite appreciate such maneuvers. Time will not permit me to make a thorough examination of all possible grounds of impeachment that members of this committee may present. I will, therefore, confine myself to the question of Watergate.

There is no evidence that the President planned the break-in.

In regard to the charge that the President participated in the cover-up, I believe that it is imperative to determine whether he had knowledge of involvement of White House personnel before March 21, 1973.

Let us refer to the tape of the morning of March 21, 1973, in which Mr. Dean, Mr. John Dean, stated to the President—Mr. Dean speaking:

"The reason that I thought we ought to talk this morning is because in our conversations, I have the impression that you don't know everything I know and it makes it very difficult for you to make judgments that only you can make on some of these things and I thought that—"

"Let me give you my overall first—"

"I think that there is no doubt about the seriousness of the problem we've got. We have a cancer"—this is Mr. Dean talking—"We have a cancer within, close to the Presidency, that is growing. It is growing daily. It's compounded, growing geometrically now, because it compounds itself. That will be clear if I, you know, explain some of the details of why it is."

Mr. Dean testified before this committee that the President knew before March 21, 1973. Mr. Chairman and members of this committee, if this is true why did Mr. Dean tell the President on March 21, if the President already knew about it? Why did he tell of the "cancer" if the President knew about this cancer.

Mr. Dean, as has been mentioned by members of this committee previously, is the only witness that in any way attempted to implicate the President.

Mr. Petersen, Assistant Attorney General, and head of the Criminal Justice Division of the Department of Justice, in answer to a number of questions and in answer again specifically to a question asked by Mr. Sandman, stated that there is no evidence, there is no evidence to implicate the President of the United States in any criminal action. Now, this comes from the head of the Criminal Justice Division, from the man who has made the investigation, from a career man, from a man whose reputation and integrity are beyond reproach.

And yet, Mr. Dean says otherwise. I can only say that I do not believe Mr. Dean, and I don't believe the American people will believe Mr. Dean.

If I have to choose between Mr. Dean and the President as to who is telling the truth, I have no difficulty in that regard.

Now, let us turn to the tape of the morning of April 16, 1973, and what does the President say to Mr. Dean, in regard to his testimony before the Grand Jury? The President says: "Don't lie. Don't do it, John. Tell the truth. That is the thing I have told everyone here. Tell the truth. Don't lie. Understand what I say. Don't lie about me either." In effect he says later on go to the Grand Jury. Go down and testify. Go down and tell the truth. Do not claim executive privilege. Do not claim attorney-client privilege. I waive that.

Mr. Chairman, and members of this committee, does this sound like a man who wants to cover up? What more can a President do but to tell his staff, as he did, to tell the truth and not claim executive privilege on the Watergate break-in.

Mr. Chairman, let me say that I listened with interest to your opening statement and I concur with that portion of your statement in which you say that we must deal fairly with every man. It is my hope that we adopt that principle expounded by you in our final and most crucial deliberations.

I look forward with interest to the discussion of the particular articles of impeachment that may be set forth and I invite those who propose impeachment to marshal the hard facts in support of their position.

They have a duty and a responsibility to do so and I, Mr. Chairman, will exercise my duty and responsibility to consider the hard facts if they can be shown.

Thank you, Mr. Chairman, and I wish to yield the balance of my time to Mr. Latta.

The CHAIRMAN. The gentleman from New Jersey has 1 minute and 5 seconds remaining which will be yielded to Mr. Latta at the appropriate time.

I recognize the gentlelady from Texas, Ms. Jordan, for the purpose of general debate, not to exceed a period of 15 minutes.

#### **STATEMENT OF HON. BARBARA JORDAN, A REPRESENTATIVE IN CONGRESS FROM THE 18TH CONGRESSIONAL DISTRICT OF THE STATE OF TEXAS**

Ms. JORDAN. Thank you, Mr. Chairman.

Mr. Chairman, I join my colleague, Mr. Rangel, in thanking you for giving the junior members of this committee the glorious opportunity of sharing the pain of this inquiry. Mr. Chairman, you are a



strong man and it has not been easy but we have tried as best we can to give you as much assistance as possible.

Earlier today we heard the beginning of the Preamble to the Constitution of the United States, We, the people. It is a very eloquent beginning. But when that document was completed on the 17th of September in 1787 I was not included in that "We, the people." I felt somehow for many years that George Washington and Alexander Hamilton just left me out by mistake. But through the process of amendment, interpretation and court decision I have finally been included in "We, the people."

Today, I am an inquisitor, I believe hyperbole would not be fictional and would not overstate the solemnness that I feel right now. My faith in the Constitution is whole, it is complete, it is total. I am not going to sit here and be an idle spectator to the diminution, the subversion, the destruction of the Constitution.

"Who can so properly be the inquisitors for the nation as the representatives of the nation themselves?" (Federalist No. 65) The subject of its jurisdiction are those offenses which proceed from the misconduct of public men. That is what we are talking about. In other words, the jurisdiction comes from the abuse of violation of some public trust. It is wrong, I suggest, it is a misreading of the Constitution for any member here to assert that for a member to vote for an Article of Impeachment means that that member must be convinced that the President should be removed from office. The Constitution doesn't say that. The powers relating to impeachment are an essential check in the hands of this body, the legislature, against and upon the encroachment of the Executive. In establishing the division between the two branches of the legislature, the House and the Senate, assigning to the one the right to accuse and to the other the right to judge, the Framers of this Constitution were very astute. They did not make the accusers and the judges the same person.

We know the nature of impeachment. We have been talking about it awhile now. "It is chiefly designed for the President and his high ministers" to somehow be called into account. It is designed to "bridle" the Executive if he engages in excesses. "It is designed as a method of national inquest into the conduct of public men." (Hamilton, Federalist No. 65) The Framers confined in the Congress the power if need be, to remove the President in order to strike a delicate balance between a President swollen with power and grown tyrannical; and preservation of the independence of the Executive. The nature of impeachment is a narrowly channeled exception to the separation of powers maxim, the Federal Convention of 1787 said that. It limited impeachment to high crimes and misdemeanors and discounted and opposed the term, "maladministration." "It is to be used only for great misdemeanors," so it was said in the North Carolina ratification convention. And in the Virginia ratification convention: "We do not trust our liberty to a particular branch. We need one branch to check the others."

The North Carolina Ratification Convention: "No one need be afraid that officers who commit oppression will pass with immunity." "Prosecutions of impeachments will seldom fail to agitate the passions of the whole community," said Hamilton in the Federalist Papers No. 65. "And to divide it into parties more or less friendly

or inimical to the accused." I do not mean political parties in that sense.

The drawing of political lines goes to the motivation behind impeachment; but impeachment must proceed within the confines of the constitutional term, "high crime and misdemeanors."

Of the impeachment process, it was Woodrow Wilson who said that "nothing short of the grossest offenses against the plain law of the land will suffice to give them speed and effectiveness. Indignation so great as to overgrow party interest may secure a conviction; but nothing else can."

Commonsense would be revolted if we engaged upon this process for petty reasons. Congress has a lot to do. Appropriations, tax reform, health insurance, campaign finance reform, housing, environmental protection, energy sufficiency, mass transportation. Pettiness cannot be allowed to stand in the face of such overwhelming problems. So today we are not being petty. We are trying to be big because the task we have before us is a big one.

This morning in a discussion of the evidence we were told that the evidence which purports to support the allegations of misuse of the CIA by the President is thin. We are told that that evidence is insufficient. What that recital of the evidence this morning did not include is what the President did know on June 23, 1972. The President did know that it was Republican money, that it was money from the Committee for the Re-Election of the President, which was found in the possession of one of the burglars arrested on June 17.

What the President did know on June 23 was the prior activities of E. Howard Hunt, which included his participation in the break-in of Daniel Ellsberg's psychiatrist, which included Howard Hunt's participation in the Dita Beard ITT affair, which included Howard Hunt's fabrication of cables designed to discredit the Kennedy administration.

We were further cautioned today that perhaps these proceedings ought to be delayed because certainly there would be new evidence forthcoming from the President of the United States. There has not even been an obfuscated indication that this committee would receive any additional materials from the President. The committee subpoena is outstanding and if the President wants to supply that material, the committee sits here.

The fact is that on yesterday, the American people waited with great anxiety for 8 hours, not knowing whether their President would obey an order of the Supreme Court of the United States.

At this point I would like to juxtapose a few of the impeachment criteria with some of the President's actions.

Impeachment criteria: James Madison, from the Virginia Ratification Convention. "If the President be connected in any suspicious manner with any person and there be grounds to believe that he will shelter him, he may be impeached."

We have heard time and time again that the evidence reflects payment to the defendants of money. The President had knowledge that these funds were being paid and that these were funds collected for the 1972 Presidential campaign.

We know that the President met with Mr. Henry Petersen 27 times to discuss matters related to Watergate and immediately thereafter met with the very persons who were implicated in the information Mr. Petersen was receiving and transmitting to the President. The words are, "if the President be connected in any suspicious manner with any person and there be grounds to believe that he will shelter that person, he may be impeached."

Justice Story: "Impeachment is intended for occasional and extraordinary cases where a superior power acting for the whole people is put into operation to protect their rights and rescue their liberties from violations."

We know about the Huston plan. We know about the break-in of the psychiatrist's office. We know that there was absolute complete direction in August 1971 when the President instructed Ehrlichman to "do whatever is necessary." This instruction led to a surreptitious entry into Dr. Fielding's office.

"Protect their rights." "Rescue their liberties from violation."

The South Carolina Ratification Convention impeachment criteria: Those are impeachable "who behave amiss or betray their public trust."

Beginning shortly after the Watergate break-in and continuing to the present time the President has engaged in a series of public statements and actions designed to thwart the lawful investigation by Government prosecutors. Moreover, the President has made public announcements and assertions bearing on the Watergate case which the evidence will show he knew to be false.

These assertions, false assertions, impeachable, those who misbehave. Those who "behave amiss or betray their public trust."

James Madison again at the Constitutional Convention: "A President is impeachable if he attempts to subvert the Constitution."

The Constitution charges the President with the task of taking care that the laws be faithfully executed, and yet the President has counseled his aides to commit perjury, willfully disregarded the secrecy of grand jury proceedings, concealed surreptitious entry, attempted to compromise a Federal judge while publicly displaying his cooperation with the processes of criminal justice.

"A President is impeachable if he attempts to subvert the Constitution."

If the impeachment provision in the Constitution of the United States will not reach the offenses charged here, then perhaps that 18th century Constitution should be abandoned to a 20th century paper shredder. Has the President committed offenses and planned and directed and acquiesced in a course of conduct which the Constitution will not tolerate? That is the question. We know that. We know the question. We should now forthwith proceed to answer the question. It is reason, and not passion, which must guide our deliberations, guide our debate, and guide our decision.

I yield back the balance of my time, Mr. Chairman.

The CHAIRMAN. I recognize the gentleman from Ohio, Mr. Latta, for 15 minutes and 5 seconds.

**STATEMENT OF HON. DELBERT L. LATTI, A REPRESENTATIVE  
IN CONGRESS FROM THE FIFTH CONGRESSIONAL DISTRICT OF  
THE STATE OF OHIO**

Mr. LATTI. Thank you very much, Mr. Chairman.

First of all, I wish to join the other members of this committee in commending you for the tremendous job that you have done in presiding over these hearings. After most of the deliberations this committee is now rushing toward a possible date with history. I hate to say this, but what has been said in this room during the past couple of days will probably have little or no effect upon the future of this great and beloved land.

What we do here could, however, commence the most significant single action to be undertaken by this Government since our Founding Fathers delivered us a Nation, which has given us the most freedom, the greatest opportunities, the highest standards of living of any nation on the face of the globe.

We can be setting in motion the establishment of a precedent which could have a far greater impact on this country's future than any mortal man can foresee. Our Founding Fathers in their wisdom gave us a nation, a national government of three separate and co-equal branches, each branch un beholden to the other, but each with a different and a particular function to perform. This system has worked well throughout the years. It must work in the future.

America has had weak and strong Presidents, weak and strong Congresses, weak and strong Supreme Courts, all judged according to the likes and dislikes of those doing the judging. Notwithstanding the obvious strength of a particular branch, and the comparative weakness of another at any given time, the doctrine of co-equal branches has survived to serve its function and serve it well.

During all of this time, the House has seen fit to impeach but one President, and the Senate refused to remove that one. The unanswered question being if the Senate had removed Andrew Johnson, would we still be enjoying the benefits derived only through the proper functioning of co-equal branches of government, or would the legislative branch now be supreme, and the President occupying not a co-equal but a lesser role in our Government? No one can answer this question, and no one can foresee the consequences of a President's impeachment and removal by a Congress controlled by an opposition party.

Would this mean that future Congresses with heavy political majorities would be more apt to initiate or threaten to initiate impeachment proceedings against the President of a different political faith just to make certain that he adhered to their wishes?

Wouldn't the mere thought of impeachment by an opposition Congress cause future Presidents to tailor their acts to the wishes of the Congress, thereby weakening the Office of the Presidency? All must agree that today's world demands strength, not weakness in the Office of the President of the United States.

As we deliberate in the closing days of these hearings, each of us on this committee must consider the effect the President's removal would have on the strength of this office and the respect it enjoys throughout the world.

I am not unmindful of the fact that President Nixon's ratings within the national polls are about as low as they could possibly be, that the present occupant of the White House is not in favor with the news media, and that President Nixon has no chance of gaining a congressional majority in 1974, that many Republican officeholders are saying aloud that they would fare better in the 1974 and the 1976 elections with Vice President Ford in the White House and that they believe that the politically expedient thing to do would be to vote for impeachment.

Yes; the cries of impeachment, impeachment, impeachment are getting louder. But, for these reasons alone one could easily be led to believe that the proper thing to do would be to vote to recommend impeachment.

For the past year allegation after allegation has been hurled at the President. Some of them have been stated so often many people have come to accept them as facts, without need of proof. Our job as members of this committee has been to sift through these allegations and to attempt to ascertain whether any or all of them are untrue and supportable on the floor of the House.

Yes, and if need be, in the Senate of the United States.

As members of this committee, we are aware that I as a member came here only last February by direction of our Committee on Committees. The Committee on Committees apparently believed that my liberal friends on the other side might possibly be persuaded to at least take a second look at some preconceived positions on this important matter. I am here to tell my friends, and I put that in quotes, on the Committee on Committees, that they gave me an impossible assignment. How can the members of this committee, who have made public statements, and have themselves introduced articles of impeachment, prior to our deliberations, retract those statements, undo those actions, and assume a role as an impartial juror? How do you overcome the powerful influences of such pro-impeachment forces as organized labor, COPE, ADA, and similar groups on the minds of members sympathetic to their causes?

The truthful answer is you don't, and I am not about to represent to the good people of the Fifth Congressional District of Ohio or the people in this great Nation that you can do otherwise. Everybody on this committee detests wrongdoing. No one condones it, and by their very nature such things have always been repugnant to me, and I would be the first in line to punish any wrongdoer, the President of the United States included, once he is found guilty. I have said before and I say now, show me the hard evidence that the President of the United States is guilty of the many serious charges being leveled against him, and I will show you a vote for impeachment. This evidence must be clear and convincing. It cannot be based on inferences. We cannot make articles of impeachment against the President of the United States by attempting to infer that he had knowledge of wrongdoing that was going on in his administration and yes; lo and behold, in the Committee To Re-Elect the President, which was composed of Democrats, Republicans and independents alike.

Neither can we try to make him responsible under the old theory of principal and agent, as some of these articles are proposing.

To impeach there must be direct Presidential involvement, and the evidence thus far has failed to produce it.

This makes it imperative that this committee not rush to judgment at this hour without the benefit of knowing what is in the 64 tapes that the Special Prosecutor is to receive under this week's Supreme Court decision. I for one believe very deeply in one of the cherished and previous cornerstones of American Justice, and that is that a person in America is considered innocent until proven guilty. Every American citizen, including the President, is entitled to this presumption of innocence, and contrary to what I have heard said, it is not incumbent upon the President to prove his innocence. It is incumbent upon this committee, if it goes to the floor of the House, to prove that he is guilty to the satisfaction of the members, and yes; over to the Senate if that arises.

It was unfortunate during our deliberations that the American people were denied their right to listen to the few witnesses who appeared before this committee by a party line vote, and are now only being invited to sit in on these hearings. They should have been permitted to listen to the tapes, expletives deleted, of course, in order that they could draw their own conclusions from the total conversation other than from the bits and pieces extracted here and there to serve a particular purpose.

Hopefully before this matter is finally resolved, this opportunity will be given to them.

Before considering the charges being leveled against the President by his chief accuser, John Dean, we perhaps should check briefly into his credibility as a witness in several instances. Make no mistake about it. John Dean came up with the answers to questions propounded by the Senate Watergate Committee from a good memory and even bragging about it in several instances. When he appeared behind closed doors before this committee, knowing that we had listened to the tapes and had the transcripts before us, his testimony reveals that his memory was not as good as it was in the Senate and he then apologized to us for not having a tape recorder memory.

When Mr. Dean appeared before the Senate Watergate Committee, he stated his March 21 conversation with the President relative to paying attorneys fees and family support was left hanging. In appearing before a closed session of this committee, he indicated he might have discussed the matter with the President at an earlier date, but by so doing, his testimony immediately came into conflict with the testimony in the Senate that his friend, Mr. Moore, attorney at the White House, had chastised him on the 20th for not going in and telling the President all the things he had been telling him.

Mr. O'Brien then appeared before our committee and disagreed with Dean's testimony in several respects; as a matter of fact, under questioning by this member, he disagreed with Dean's testimony on three different places on 1½ pages of transcript.

John Dean admitted before our committee that he became involved in the Watergate coverup almost from the very beginning.

He also testified before our committee that he did not see the President after the June 17 break-in until September 15, and that the President never gave him any instructions to cover up anything.

He also testified before this committee that he authorized Caulfield to offer clemency to Watergate defendants, assisted Magruder in making a false statement, and initiated an unsuccessful IRS investigation of certain individuals prior to his September 15 meeting with the President.

Quite frankly, these hearings gave me more information on the President's chief accuser than I had previously had. Certainly during this committee's deliberations, one of the more important questions to be resolved was whether to choose to believe John Dean or the President of the United States. Eight of the nine witnesses before the committee testified they had not discussed acts of wrongdoing with the President. Here again, John Dean stands alone.

In conclusion, let me say if the committee decides to recommend impeachment of the President, based on the wrongdoing of others, the evidence is here, and it is clear and convincing; if the committee decides to recommend impeachment based on direct evidence of Presidential involvement in wrongdoing, the evidence is not here. The case is that simple.

The CHAIRMAN. I recognize the gentleman from Arkansas, Mr. Thornton, for purposes of general debate for a period not to exceed 15 minutes.

**STATEMENT OF HON. RAY THORNTON, A REPRESENTATIVE IN CONGRESS FROM THE FOURTH CONGRESSIONAL DISTRICT OF THE STATE OF ARKANSAS**

MR. THORNTON. Thank you, Mr. Chairman.

I know that everyone here in this room and throughout the Nation who has watched this debate has been impressed with the fairness that the chairman has brought to these proceedings, and with the quality and the work that has gone into the comments of the various members who have spoken to us. As the gentleman from California, Mr. Waldie, said earlier today, we are all conscious of the need to bring our best to bear on this question, conscious of how fragile our liberties are and how easy it is to abuse them or lose them.

If these debates have done nothing else, I believe they have demonstrated that this committee has applied the work, the study and the concern which this grave problem requires us to give.

For myself, last fall, after Mr. Cox was fired, and an inquiry was started, I approached the problem with the hope that it would not be necessary to bring articles of impeachment against the President of the United States. I started with the belief and the presumption of President Nixon's innocence of the charges that had been leveled against him. From the beginning, I made my position clear that I would not prejudge this case, that it should be decided upon the law, upon the evidence, and not upon newspaper headlines or public opinion polls.

And for that reason, I have not conducted any public opinion polls in my own district. I have read the letters that have come in. Those letters that come in and advocate impeachment do so with a sadness that recognizes the trauma of this process.

And there are other letters that come from people who believe that the charges against the President are the result of a publicity campaign, and perhaps some of these people will never believe anything else.

But, I am happy to say tonight that most of the people in my own State of Arkansas are law-abiding citizens, who believe strongly in the rule of law of this country, and that all of the people of this country have an obligation to live by that standard of law, and that the leaders of this country have an obligation not merely to obey the law but to set an example of justice and adherence to justice upon which our free Government must be based.

As long as such people who believe in the rule of law are in the majority in this country, our free institutions are going to survive, and there will be no need to worry about personal political considerations when called upon to make a judgment such as the one that we now have to make. There can be no national interest greater than the requirement that the public servants must be bound by the laws that they make and administer. There can be no public policy which could be served by substituting for the permanent ideals of the Constitution the political expediencies of the day. This is not only applied to the President's conduct of his Office, it applies to each member of this committee as we make our decision.

As Ms. Jordan indicated, it is a great privilege to serve our constitutional system of Government. We now have a difficult task in this committee.

But believe me, it is never easy to maintain a free Government. It requires constant attention and diligence, and I believe it is a real privilege to serve in time of need.

Now, all of us know it is clear that a President should never be impeached simply because of the unpopularity of his policies or his ideas. It should be equally clear that the popularity of a President must never permit him to place himself above the law.

The power of impeachment is not a substitute for the political judgment of the people of this country. It is not a means to compel adherence to public opinion. It is not, in my view, a means of punishment even. If used for any of these purposes, it would be wrongly used, and might have the effect of placing out of balance the constitutional system of checks and balances which was designed to accommodate mistakes and frailties of men as they go about their duties in the various offices they hold.

You know, as I have reviewed the many pages of evidence which have been presented to us, and listened to the witnesses who have appeared before us, I could not help but observe that many of the things that we saw, the eavesdropping, the invasion of property, the dirty political tricks, these things had happened before. It doesn't excuse them. But, they have happened. Even violations of law such as have been described in the evidence before us though they are rare in our history they also have occurred.

But, as I have reviewed the evidence and the testimony, it has become evident to me that while these offenses may have existed before, I know of no other time when they have been systematized, or carried on in such an organized and directed way.



Early in this proceeding, the question was frequently asked whether an impeachable offense was the same as an indictable crime. I think more is required. All men are ultimately answerable to the courts for the consequences of their illegal acts. To justify the bringing of articles of impeachment against the President, it is not enough to demonstrate that there is probable cause that crimes and abuses have occurred. It is also necessary that these actions constitute high crimes and misdemeanors against the system of Government itself.

Throughout these proceedings, I have attempted to analyze the facts and the evidence which has been presented according to these standards. I would like to say, though, that this judgment that each of us is called upon to make must be made on the basis of the whole body of the evidence which has been presented to us, and we perhaps err in trying to isolate a few instances of that evidence in this debate tonight.

It is so easy to overlook details which might have some meaning, because they don't seem to be too important. For instance, when Mr. Colson was testifying that when the President heard of the Watergate break-in at Key Biscayne, that he was told that the President threw an ashtray across the room in anger. Mr. Colson stated that he related this to us to demonstrate the President's surprise and anger, supporting a belief that the President didn't know of the burglary in advance.

But, what that outburst of anger also indicates, at least to me, was a revelation, as of that moment, at the start, that his own men were involved in a stupid and criminal act, which had the potential of terrible embarrassment to him.

Within hours following the burglary, the President's chief of staff, Mr. Haldeman had discovered that if the investigation into the burglary should be thoroughly pursued, it would lead to the same individuals who had illegally broken into Dr. Fielding's office, who had engaged in illegal wiretapping and surveillance of individual American citizens and in various of the other activities that have been labeled as the White House horrors.

Three days after the break-in Mr. Haldeman reported to the President on subjects which his notes reflect as dealing with the Watergate break-in. And 18½ minutes of that tape of that conversation have been destroyed by at least five separate and distinct erasures of the relevant portion of the tape.

But, that was only the beginning. I suppose it would be human to try and cut the losses which would follow from a ridiculous and petty, foolish act like breaking into the headquarters of an opposition party. So the first Watergate coverup got started immediately, and even if we suppose for a moment that this coverup was managed not only to obstruct the investigation but also to shield the President from direct personal decisions, as the plan unfolded and grew in size and criminality, there can be no mistake that he was aware and approved generally of the efforts to contain the evidence. You have heard about July 1972, the Pat Gray telephone call, that his aides were trying to mortally wound him and the three conversations which have been mentioned by Mr. Froehlich, Mr. Seiberling, and others, the first with John Dean on September 15 with the President. And talk about direct evidence, it is the rarest thing in the world to have the person who is being checked into available to listen to, and on this tape, which was

furnished to the Special Prosecutor and later to our committee, the President says to John Dean, complimenting him on "putting your fingers in the dike every time that leaks have sprung here and sprung there."

In a second conversation on March 21, 1973, the President told Dean, "You had the right plan before the election. You handled it just right. You contained it."

And a third one, with John Mitchell, on March 22, 1973, when the President said, "As you know, up to this point, the theory has been containment."

But, even if we accept that the first full knowledge of the terrible details of the first White House coverup was in the conversation on March 21, there was still time and adequate opportunity to choose a course of the obedience to law, of full and fair disclosure to the Prosecutors, of cutting away from those who had engaged in conspiracy which had pervaded the White House. And so for nearly 3 weeks before Henry Petersen came to him, concerned with what his investigation had developed, and offering what he—Henry Petersen—thought was the last clear chance for the President to raise above the criminality which surrounded him, the President had sufficient and ample opportunity during this time to investigate and act. And therefore, the actions of the President with Henry Petersen must be considered in light of this knowledge, and not based, as assumed by Mr. Petersen, upon a desire to investigate new revelations before taking action.

Rather than choosing a course of simple obedience to law, commencing in March 1973 the second coverup began this time, certainly under the direction and control of the President himself.

In April 1973 Petersen gave the President information by the Department of Justice and the grand jury, relating to evidence of wrongdoing on the part of his aides, based on the President's assurances that he would not pass on, that he knew what grand jury information was.

Nevertheless, the President relayed the information to his aides, not only possible witnesses, but possible defendants, so that they could plan strategy to protect themselves. He withheld from the Department of Justice vital information which had been brought to his attention. He refused the request of the Special Prosecutor for recordings of conversations material to his investigation—and then fired him after accepting the resignation of the Attorney General and the Assistant Attorney General, who refused to fire him—in an effort to avoid the production of this evidence.

And, of course, all of the committee members are aware of the noncompliance with this committee's subpoenas.

You know, with regard to obstruction of justice, the President's counsel has told us that many criminal defendants have been sentenced or are awaiting trial, and that proves that the process of law has not been illegally interfered with. But, it is no answer that somehow the system has continued to work, despite the action of the President in trying to impede it.

We have before us a momentous and a difficult decision. I have approached it as a matter of law, and because I have faith that the people of this country believe that a system of law to which all men

are subject is a system that we want, and must preserve. I did not ask for, and I don't particularly enjoy the duty of sitting here in judgment on any other man's fulfillment of his oath of office.

But, Mr. Chairman, like the other members of this committee, I have got an oath of office of my own, responsibility to decide this grave matter, not on the basis of political interest, but as a matter of my own best conscience, my judgment of the law, the constitutional principles that are involved.

And I must say, as the gentleman from Virginia did, that while I will reserve my final judgment until the vote which will follow later, I can now say that on the basis of all of the evidence which has now been produced, I have reached the firm conviction that President Nixon has violated his oath of office by abuse of power, and by obstruction of justice, and that these offenses constitute high crimes and misdemeanors, requiring trial on these charges before the Senate of the United States of America.

In my view, to find otherwise would effectively repeal the right of this body to act as a check on the abuses which we see have existed.

The CHAIRMAN. I recognize the gentlelady from New York, Ms. Holtzman, for general debate only and for a period not to exceed 15 minutes.

**STATEMENT OF HON. ELIZABETH HOLTZMAN, A REPRESENTATIVE IN CONGRESS FROM THE 16TH CONGRESSIONAL DISTRICT OF THE STATE OF NEW YORK**

Ms. HOLTZMAN. Thank you, Mr. Chairman.

I want to join with the other members of this committee in thanking you for conducting these proceedings with dignity and fairness consonant with the solemnity of the occasion.

Mr. Chairman, as we sit here to measure President Nixon's conduct against the standard set in the Constitution of the United States each one of us has questioned what the Constitution means and what duty our oath of office imposes on us, and each member on this committee is publicly groping for the right thing to do.

I am overwhelmed by the stark contrast this presents to the President's words and actions. Nowhere in the thousands of pages of evidence presented to this committee does the President ask what does the Constitution say? What are the limits of my power? What does my oath of office require of me? What is the right thing to do?

In fact, those thousands of pages bring to light things that I never even dreamed of when this proceeding began.

Wherever we looked in this inquiry we found Presidential conduct that was sorry and disgraceful. Mr. Nixon allowed the people's tax money to be used for the enrichment of his personal properties. Hiding behind the enormous respect for his high office, he failed to report income and claimed tax deductions totaling almost \$1 million. He appointed and kept in office as Cabinet members and close advisers persons whom he knew to be seriously unfit. He repeatedly and knowingly deceived the American people who trusted him and wanted to trust him. He surrounded the highest office in this land with scandal and dishonor.

The thousands of pages before this committee, are witness, in my opinion, to a systematic arrogation of power, to a thoroughgoing abuse of the President's oath of office, to a pervasive violation of the rule of law. What we have seen is a seamless web of misconduct so serious that it leaves me shaken. And what affects me most deeply is the evidence that Richard Nixon sought to subvert the two essential principles that have shaped and preserved our 198-year history as a free people. He has obstructed, impeded, and corrupted the workings of our system of justice and he systematically used the awesome power of his office to invade the constitutional rights of the people.

Some have said there is no direct evidence. It is for this reason that I want to show, using examples from Watergate, that it is principally out of the President's own mouth and through his own words that we find the strongest evidence of the high crimes and misdemeanors he has committed.

Watergate—June 17, 1972—five men working on behalf of the President were arrested for breaking into and bugging the Democratic National Committee Headquarters in Washington. Nowhere in the thousands of pages of evidence do we find any suggestion that President Nixon tried to bring all the facts he knew to light or to bring to justice those responsible for this act. Instead, the evidence suggests that he consistently tried to prevent the truth from coming out.

Six days after the break-in, Mr. Nixon ordered the CIA to limit the FBI's investigation. The CIA was told that it was the President's wish that the investigation stop with the five suspects that had been arrested, and in fact the FBI investigation was impeded and contained.

In the fall of 1972 President Nixon specifically ordered that the House Banking and Currency Committee investigation into Watergate be stopped. In his own words, Nixon told his men to "screw this thing up," and in fact the House Banking and Currency Committee's investigation was stopped before it even started.

By March 1973, we find the President plotting to thwart fact finding by the Ervin committee in the Senate.

On March 22 the President contemplated a number of courses of action. The first was in his words, "I want you all to stonewall it. Let them plead the fifth amendment, cover up or anything else, if it will save it, save the plan."

And in fact two of Mr. Nixon's closest aides were indicted for perjury before the Senate subcommittee.

A second scheme was to avoid the Senate select committee by going to the grand jury and these are the directions the President gave to his aides for testifying before the grand jury and I quote:

"Just be damn sure you say 'I don't remember,' 'I can't recall,' 'I can't give any honest, an answer to that that I can recall,' but that is it."

And in fact Ehrlichman and Mitchell were indicted for committing perjury before the Watergate Grand Jury on the grounds they stated they could not remember.

It is clear to me that the President was approving or at least acquiescing in hush money payments amount of over \$400,000 to buy the silence of Watergate burglars. The President discussed the matter of paying Hunt 10 separate times in a conversation on March 21 with

Dean and Haldeman and the last time the President discussed it he said, and I quote:

"That's why for your immediate thing you have got no choice with Hunt but the 120, or whatever it is. Right? \* \* \* Would you agree that that's a buy time thing? You better damn well get that done, but fast. Well, for Christ's sake, get it."

Perhaps some people find ambiguities in that conversation. I don't.

On the subject of executive clemency, the record is clear and convincing. For example, in April of 1973 the President was afraid that Magruder would reveal Haldeman's role in the Watergate break-in to the Special Prosecutor. President Nixon told his aide Ehrlichman to try to soften Magruder's testimony by showing the President's personal concern for Magruder and thus suggesting executive clemency. These are the President's words:

"I would say, 'Jeb, let me just start here by telling you the President holds great affection for you and for your family.' Also, I would first put that in so that he knows I have personal affection. That is the way the so-called clemency has got to be handled." And Ehrlichman reported back to the President that the clemency message was transmitted to Magruder.

In late March and April 1973, the President tried to obstruct the renewed investigation by the Watergate Grand Jury and the Department of Justice. After John Dean had confessed to the President his own pre-break-in involvement and that of Haldeman, Ehrlichman and Colson, the President on March 27 instructed John Ehrlichman to tell the Attorney General of the United States, Richard Kleindienst, an untruth. These were the President's directions to Ehrlichman:

"I think you have got to say Dean was not involved, had no prior knowledge. Haldeman had no prior knowledge. Ehrlichman had none. And Colson had none."

And Ehrlichman transmitted the message.

During the period from April 15, 1973, to April 30, 1973, the President personally spoke 27 times with the Acting Attorney General, Henry Petersen, who was in charge of the Watergate investigation. The President lied to Petersen. The President obtained confidential information from Mr. Petersen which he then used to coach witnesses, and despite all of the information President Nixon had about his aide's involvement in Watergate, he held back what he knew and told Petersen nothing.

To this day, President Nixon has never told all he knows about Watergate to any investigating body. And to this day, President Nixon continues to impede an investigation, this time our committee's constitutional inquiry. He has given us partial documents representing them to be complete. He has given us tape recordings containing unexplained silences, and he has refused to comply with our lawful subpoenas for tape recordings and documents. This on top of the fact that he permitted a critical tape held in his sole possession to be erased—after a subpoena for it was issued by the Special Prosecutor.

In sum, since almost June 17, 1972, Mr. Nixon has tried to hide incriminating evidence about his involvement and that of his aides in the Watergate coverup. First, by attempting to prevent investigations from taking place. And when he could not prevent such investigations,

by encouraging witnesses to lie about the incriminating evidence. And when he could not get witnesses to lie about incriminating evidence, by withholding that incriminating evidence. And when he could not withhold that incriminating evidence, by allowing that evidence to be destroyed.

And what is even more disturbing to me is that the illegal burglary and wiretapping, the obstruction of justice that is so painfully clear in the Watergate matter, was not an isolated instance of wrongdoing. We have seen that the President authorized a series of illegal wiretaps for his own political advantage, and not only did he thereby violate the fundamental constitutional rights of the people of this country but he tried to cover up those illegal acts in the very same way that he tried to cover up the Watergate. He lied to the prosecutors. He tried to stop investigations. He tried to buy silence, and he failed to report criminal conduct.

And if this weren't enough, the President misused the CIA and the FBI by trying to get them to execute the plans for the illegal surveillance and burglary, and to carry out the coverup of these acts.

Mr. Chairman, I feel very deeply that the President's impeachment and removal from office is the only remedy for the acts we have seen. First, because the Presidential coverup is continuing even through today. There is no way it can be ended short of the President's removal. And second, because the violation of the people's constitutional rights has been so systematic and so persistent, I must conclude that it is only through the President's removal from office that we can guarantee to the American people that they will remain secure in the liberties granted to them under the Constitution.

I yield back the balance of my time.

The CHAIRMAN. I recognize the gentleman from Utah, Mr. Owens, for the purpose of general debate, for a period not to exceed 15 minutes. Mr. Owens.

#### STATEMENT OF HON. WAYNE OWENS, A REPRESENTATIVE IN CONGRESS FROM THE SECOND CONGRESSIONAL DISTRICT OF THE STATE OF UTAH

Mr. OWENS. Thank you, Mr. Chairman.

Preparation for this inevitable time of judgment has been an exhausting experience for all of us on the committee—physically, mentally, and emotionally. I, for one, have tried very hard, and I suspect unsuccessfully, to find the right words to convey my feelings and my concern that we reach the right answers in this proceeding.

Mr. Chairman, the problem of being 37th in seniority on a committee of 38 members is that one sees his points fall one by one. I desire at the outset to state my complete confidence in the durability of our constitutional separation of powers and our great institutions of self-government, the Congress, the Judiciary, and the Presidency, which permit the people to unite and move together to solve their common problems. To me and to the people of Utah the Constitution is a very special document.

Though I faced this onerous task with great reluctance, it has been an honor to serve as a member of this distinguished body of men and

women during this historic inquiry. These statements have been extremely impressive to me, and I am proud, I must say, of my colleagues. I can't commend too highly our distinguished chairman who throughout these long, difficult months has continually maintained nonpartisan and judicial fairness who has given wise direction to the course of this inquiry and for whom I have the greatest respect and admiration. And John Doar, this good man of balance and sensitivity and strength, and Bert Jenner and Sam Garrison—to each of them and to the entire staff I think that the committee owes a very deep debt of gratitude for their scholarship and complete dedication.

Mr. Chairman, I did not bring the training and the experience of a seasoned trial lawyer to this responsibility. My background is that which the authors of the Constitution foresaw for those who would be asked to judge Presidents. I am a politician. And I would be much less than candid if I were not to state for the record that I approached this responsibility as a longtime political adversary of this President.

I am not certain how many people have really believed me over the many months of this inquiry when I have repeatedly said that I would forget my political background and approach this matter objectively. Having served on the staffs of Senator Robert Kennedy, and then Senator Edward Kennedy, the press and others have from the beginning taken my vote almost for granted, which I regret. Recognizing all that, I want now to state, as strongly and as clearly as I can, because it is important that the public have confidence in our committee's impartiality, that I believe I have been successful in setting aside the natural inclinations I may have brought with me to this inquiry. I have honestly sought to learn the truth as I have had the ability to recognize it and to be guided by nothing else than the truth in my actions. I, too, recognize that this is the most important vote that I will probably ever cast, and I want to face that mirror in later years with the peace that will come from knowledge that I gave my best efforts to this inquiry and voted solely upon the dictates of my conscience.

I have studied the evidence before this committee very carefully over many months. I have participated in every single presentation of evidence. I have listened to every single witness. I have read extensively about impeachment, agonized about impeachment, and I have discussed impeachment and its implications for good or bad, with many intelligent men and women both in Washington and in Utah. I have now measured the actions of President Richard Nixon by my understanding of his unique constitutional responsibilities.

I believe that impeachment of a President is a grave act, to be undertaken only in the most extreme of circumstances, and only for a violation of a principle of conduct which we are willing to say should be applied to all future Presidents and established as a constitutional precedent. Each member must determine for himself whether the evidence is sufficient to vote to place the President on trial before the U.S. Senate, whose constitutional role it is to be the final judge. I believe that we must vote to impeach if we believe the evidence so clear and convincing that it would support conviction of the President during a Senate trial.

Our task during these hearings has been made easier because we have had the benefit of the views of the President's attorney on the sufficiency and meaning of the evidence, and we have had a partial proffer of the President's defense in evidence by Mr. St. Clair, and legal argument both by Mr. St. Clair and by Mr. Garrison, the acting minority counsel to the committee, and this assistance has been very helpful.

However, much of the relevant evidence has been wrongfully and unconstitutionally withheld from this committee by the President, preventing us from making a judgment on all the facts. To a very great extent, the President has chosen the evidence that we have seen. We thus can assume, for purposes of this decision, that all of the evidence which is favorable to the President is now before us. We can also reasonably infer, as any civil court would instruct its jury, that the additional evidence we have sought has been denied, because it is detrimental to the President's case.

Fellow members of this committee, on the basis of all the evidence before us, I am now persuaded that the President has knowingly engaged in three types of conduct which constitute impeachable offenses under the requirements of the Constitution and that he should now be called to account before the U.S. Senate.

First, I find the evidence convincing, that the President knowingly and willfully directed and participated in a coverup of the Watergate break-in. There is clear proof that the President personally agreed to the distribution of funds, the offering of clemency to, and the coaching of persons involved in the Watergate break-in, in an attempt to secure their silence or influence their sworn testimony; that the President knew that perjury had been committed in furtherance of the coverup; and that the President personally withheld from law enforcement officials, evidence needed to solve crimes all across the spectrum of offenses known broadly as the Watergate affair. When I hear members of the committee say there is no direct evidence connecting the President with these crimes, I wonder whether we have attended the same evidentiary presentations.

Second, the President has undermined the presidency by seriously abusing the powers of his office for political profit. This includes the President's misuse of the FBI, for illegal wiretaps, and other acts, the misuse of the Justice Department, the IRS, the CIA, and other Federal agencies, as well as permitting the substantive violation by his subordinates of the rights and civil liberties of many individuals.

Third, the President's refusal to respond to our legal subpoenas constitutes an obstruction of the constitutional impeachment process which, in my view, is an extremely grave offense. The President's refusal to comply with our subpoenas would make a nullity of the impeachment power if we failed to judge this offense impeachable.

One night a month ago, about midnight, after studying the transcripts of some recorded Presidential conversations for a long time, and being somewhat puzzled, I located one of the committee's technicians, Jeff Banchemo, at his home and asked him to return to the impeachment committee office to replay for me the taped conversations of the morning of March 21, 1973, and that of the following day. I wanted



to study the President's intention. I wanted to know what the President intended when he apparently agreed repeatedly to the payment of hush money to Howard Hunt. Was he playing the devil's advocate or did he intend that the payment be paid? I replayed a dozen times that night the section of the March 21 conversation which two prior speakers mentioned. When the President told John Dean to "get it," in apparent reference to the \$120,000 which Hunt was demanding as the price for his continued silence, and I had been intrigued by the new plan to handle Watergate about which the President had spoken and wanted developed.

I had a clear feeling that late night that I knew what the President intended when as I replayed the tape time and again I heard him instruct John Dean to develop a new plan for containment of Watergate. This is the President speaking: "And then once you, once you decide on the plan—John—and you had the right plan, let me say, I have no doubts about the right plan before the election. And you handled it just right. You contained it. Now, after the election, we've got to have another plan because we can't have, for 4 years, we can't have this thing—you are going to be eaten away. We can't do it."

And Bob Haldeman's followup response to the President, "John's point is exactly right, that the erosion here now is going to you,"—meaning the President—"and that is the thing we have got to turn off, at whatever the cost. We've got to figure out where to turn it off at the lowest cost we can, but at whatever cost it takes."

And the following morning, further discussing the new plan with John Mitchell the President instructs: "I want you all to stonewall it. Let them plead the fifth amendment. Cover up or anything else if it will save it, save the plan. That is the whole point."

And again his final explanation to John Mitchell, "Up to this point the whole theory has been containment, as you know, John."

The late hour and my fatigue combined with the realization that this was the President of the United States speaking, and it created in me a sense of unreality. I could hardly believe what I was hearing on those tapes. But I heard his words unmistakably from his mouth. The President's intention was clear and inescapable.

Awesome as the impeachment and removal of a President can be, the Framers of our Constitution provided for this power. They didn't expect us to fear it. We were not to be intimidated by it. The power was to be used when necessary and proper. They created after all a Government of laws, not a Government of men, and whether we like it or not, impeachment is the only tool the Constitution provides to control a President who refuses to obey the law.

Now, I do not fear that the impeachment of a President on solid evidence would do harm to the office of the Presidency. Our Nation recently survived the trauma of a Presidential assassination and united behind a new President. Vice President Ford is an honest man of integrity and intelligence. The country would rally to his support if by action of Congress he were to become President.

Mr. Chairman, I believe the significance of what we do here will endure for many years to come. If our standard of impeachment is too

low or insubstantial, we will seriously weaken the Presidency and create a precedent for future use of the impeachment power when charges may be trivial or partisan, but if we set standards of impeachment which are too low or narrow, if we fail to impeach now with this evidence before us, we are saying to future Presidents you are not required to obey the law.

The implications for wholesale loss of individual freedoms would be staggering. And we would in that circumstance render completely impotent the impeachment power which the Constitution vested in Congress as the last resort, to prevent serious abuses of power by all Presidents.

I believe that the impeachment of this President, if it resulted in his removal and his replacement by Gerald Ford, would not be to the political advantage of my Party, but the totality of the evidence has convinced me that it would be to the public benefit of my country. It is possible that in a Senate trial additional evidence which we have not seen would be presented in the President's defense and no one knows, nor should they pre-judge whether the Senate would convict. That would depend upon the evidence presented to them. But the weight of the evidence presented to this committee now stands clearly and convincingly for impeachment.

I take no joy and no satisfaction in this decision. I do not take pleasure in pointing an accusing finger. It is a disgusting and distasteful task. It is a joyless resolution to a heartbreaking problem which will cause great pain and suffering. I do it strictly because of the obligation imposed by my membership on this committee and by my judgment that the Constitution requires it of me.

This Republic, created by the Constitution, represents the finest attempt in the history of mankind to establish a government of laws which can assure equal justice for all and guarantee each individual the dignity to which he is entitled. Today the Nation looks to this committee to resolve an unprecedented crisis of confidence in that system and its leaders which left unresolved could have disastrous implications. Ours is the responsibility of restoring confidence in our Government by assuring that the President is charged before the Senate where he will either be convicted or acquitted.

With the evidence before us, if we fail to vote for impeachment and a Senate trial we will have failed the Nation for today and for the future. We will increase public despair and especially disillusion among the young and we will have no way to resolve these questions about the President's conduct which a Senate trial will put to rest one way or another.

If we fail to impeach because of our own political allegiances or fortunes, we will have engaged in conduct as harmful to the Nation as that conduct of the President, the record of which I believe we must now refer to the Senate for their appropriate action.

The CHAIRMAN. The time of the gentleman has expired.

I recognize the gentleman from Iowa, Mr. Mezvinsky for purposes of general debate only for a period not to exceed 15 minutes.

Mr. Mezvinsky.

**STATEMENT OF HON. EDWARD MEZVINSKY, A REPRESENTATIVE  
IN CONGRESS FROM THE FIRST CONGRESSIONAL DISTRICT OF  
THE STATE OF IOWA**

Mr. MEZVINSKY. Thank you, Mr. Chairman.

I know that I am one of the last speakers but I shall not have the last word because we all know that the last word belongs to the Constitution.

My colleagues and I who have anguished over this task know this all too well. You can tell it from the words they have spoken, whatever side of the aisle they were on.

I just hope that I am able to make a contribution to a further understanding of our grave responsibility.

Now, the American Presidency is a rare trust. It is truly a culmination of a national trust and confidence. And what we are all called on to do by our Constitution is to scrutinize the treatment of this sacred trust by Richard Nixon. By putting the impeachment process into motion, we have accepted the challenge laid down 200 years ago by the Founding Fathers, the challenge to preserve the Government that they created. I think it is important for us to remember that the authors of that Constitution provided this process was not as something to be feared by the Nation, but rather as an essential provision to reassure and protect the people from the abuse of the great powers of the Presidency.

The Founding Fathers really insisted that the President be held to the highest standard of accountability and we know that the impeachment process is really the ultimate guarantee of that accountability.

The Congress is called on to enforce that guarantee. And for this reason it is not only Richard Nixon that is on trial: So are we, every member of this committee, every Member of this Congress.

We are asked to judge whether Richard Nixon should be called on to account for his actions, and tried in the Senate for the abuse of the great trust reposed in him.

The question before us is whether Richard Nixon has abused that great gift of the Presidency. That this question has had to be posed is disheartening for all of us who hold a deep respect for the Presidency. You can sense that—it is evident in the remarks made last evening and throughout today.

I take a look at my own background, a background where my parents were immigrants who were genuinely inspired by America as they compared it to their homeland of czarist Russia and turn-of-the-century Poland. I grew up in Iowa with a great admiration for our Presidents, whether they be Republican or Democrat, and I now find it personally unsettling to be faced with the harsh evidence that Richard Nixon has abused the Presidency. But the committee must face the evidence and that is what it is. It is evidence. To do otherwise would be a grave dereliction of our duty.

I want to focus on an area that is not now covered in the articles: That is the evidence on the President's taxes because I believe this evi-

dence falls into a pattern of abuse which the committee must consider and I think the tax question is especially important because it is so readily understandable. All of us pay taxes. All of us deal with the Internal Revenue Service.

Now, let us review the facts about the Presidential taxes. Here is the story.

For the first year he was President Mr. Nixon paid about \$72,000 in income taxes. Now, that is a lot of money. But his income was over \$460,000 and the IRS has ruled that he should have paid more than \$220,000 in taxes.

In 1970, on an income of almost \$360,000, Mr. Nixon paid only \$793 in taxes. I think that's worth repeating. His income was more than one-third of a million dollars and he only paid \$793 in taxes. That is less than the average family in my home State of Iowa paid. He should have paid more than \$90,000 in taxes, more than 100 times the amount that he, the President of the United States, deemed his proper tax.

Now, let us carry on the story. The next year, 1971, Mr. Nixon paid \$878 in taxes on an income of more than \$250,000. Anyone else in his income tax bracket would have paid at least \$94,000 that year, but he only paid \$878.

And the story goes on. In 1972, our President paid a little over \$4,000 in taxes. His income was over one-quarter of a million dollars and he should have paid more than \$90,000 in taxes.

Now, that means in 4 years Richard Nixon underpaid his Federal taxes by nearly \$420,000.

Earlier this year, the Joint Committee on Internal Revenue Taxation, a committee that is held in the highest respect of this Congress, and it issued its report on its review of the President's taxes for the years 1969 through 1972. It was this report that first laid bare the wide discrepancy between what Mr. Nixon owed and what he actually paid. One of the most significant findings of this report was that a more than one-half of a million dollar deduction claimed by the President was improper. That disallowed deduction which involved the gift of Mr. Nixon's pre-Presidential papers to the National Archives, a gift made to build Mr. Nixon a tax shelter.

By ducking into that shelter, the President was able to substantially pare his taxes for 4 consecutive years, but finally it came home to roost in 1974. The story goes on. When Mr. Nixon's tax returns for those years received their first thorough review, the tax shelter collapsed because the deduction was found to be improper. Now, why was it improper? Well, in 1969, the Congress closed the loophole which allowed tax benefits for such gifts Mr. Nixon knew about this law because he signed it. The President says that his gift was made before the loophole was closed and he has a deed that purports to show that the gift was made in time to beat the change in the law. Considering the date on the deed, the IRS first said that the deduction was legitimate.

But we really know now that that deed was falsely backdated to indicate that the gift was made in time for the deduction. That deed was not executed in the spring of 1969 like it says but in a White House meeting more than a year later.

Based on the backdating of the deed and other evidence, IRS has ruled that the President had no right, no right to take the deduction he claimed.

The evidence presents a glaring pattern of deception.

Just as distressing has been the President's response. He disclaims responsibility for his tax returns. He says that if there is any problem, it is his tax lawyers and his accountants who are at fault. He would like us to believe that he has had no part in the seamy circumstances surrounding the suspicious deed of gift.

But, we know that Mr. Nixon generally paid close attention to his financial affairs; he was well aware of the beneficial tax consequences of the gift.

Can we really believe that Mr. Nixon didn't know the facts surrounding this gift of over one-half of a million dollars, the largest gift he ever made in his life? Don't you think, every member of this committee, and everyone that is listening, don't you think that when a man, whose income is in the hundreds of thousands of dollars, looks at his tax return and sees that he is only paying \$793, don't you think he has an obligation to scrutinize his return and make certain that every deduction is proper? Especially if he is the President of the United States?

There is a good deal of evidence on this matter and it is disturbing evidence. But, probably what is the most disturbing of all is that when the Joint Committee sent the President questions about these matters, he never even bothered to answer them.

One of the witnesses that come before this committee, was the former head of the Criminal Tax Fraud Division of the Department of Justice. He served in that office for 24 years under many Presidents, including President Nixon. He considered the evidence that we had, and he testified on the President's taxes. He said that if the Justice Department had that much evidence on any ordinary taxpayer, you or I, and that taxpayer refused to answer the questions, the Government would seek to indict the taxpayer and send him to jail.

But, Mr. Nixon tells us that he is not responsible for what is on his tax returns, even though he is the one who signed "under the pain of perjury" on the bottom line.

It was not his tax lawyers who signed that return. It was not his accountant who signed the return. Richard Nixon is the one who signed on the bottom line. After the reaudit by IRS, which found these problems, the President was required to pay back taxes for 1970, 1971 and 1972. And then he often reiterated after that that he would voluntarily pay his back taxes for 1969, even though our laws can not reach back that far.

But, you know, he has not paid those taxes yet. There is still a \$148,000 bill outstanding from our Treasury. The \$148,000 he should have paid by April 1970, is still unpaid today.

Now, I think this committee has to face up to the question of whether Richard Nixon has willfully evaded his taxes.

I believe this matter falls into a pattern of abuse of office because it is evident that the President entertained an expectation for and took advantage of favorable treatment by the IRS. I view this as a grave misuse of a serious violation of public trust that demeans the Office of the Presidency.

Our tax system is based on impartiality, and everyone is supposed to be treated fairly under our tax laws. Now, some of my colleagues, such as Tom Railsback, whose district is right across from mine on the Mississippi, they have already discussed the disturbing practice of making up friends and enemies lists in the White House and sending them over to the IRS for special attention. You have to wonder when you look at the friends list whether the President wasn't his own best friend.

As we look at this area, we cannot concern ourselves solely with the question of willful evasion of taxes.

We have to consider the President's unique position in our country. He is looked to for leadership and his respect for and adherence to our laws is supposed to set an example for the rest of us.

We must remember that if an average citizen cheats on his taxes, the Treasury only loses the money. But, the President deliberately fails to pay his proper taxes, we risk the corrosion of our entire system. And really when we consider taxes or any of the other serious charges before us, we have to take a hard look at what Richard Nixon's conduct has done to our system of government.

Mr. Chairman, as you so eloquently noted at the opening of this general debate, we are at the crossroads for America. Whatever this committee decides, it will have a major impact on the future of our country. What legacy shall we leave for the future?

Will we condone Richard Nixon's Presidential conduct and sanction his claims that he is the defender of that grand Office or will we record our abhorrence at the way he has defiled the Office?

Will we ignore the actions which have already brought so many of our children to hold such a low regard for the highest office in our land, or will we make it clear to our fellow citizens that we cherish the Office of the Presidency and will take up the constitutional challenge to protect it?

As we proceed with the debate on these articles, on the question of whether we are to bring Richard Nixon to account for the gross abuse of Office, I think we must all ask ourselves if we do not, who will?

The CHAIRMAN. The time of the gentleman has expired.

I now recognize the gentleman from Michigan, the ranking member of this committee, Mr. Hutchinson, for the purpose of general debate, and for a period not to exceed 15 minutes.

Mr. Hutchinson.

**STATEMENT OF HON. EDWARD HUTCHINSON, A REPRESENTATIVE  
IN CONGRESS FROM THE FOURTH CONGRESSIONAL DISTRICT OF  
THE STATE OF MICHIGAN**

Mr. HUTCHINSON. Thank you, Mr. Chairman.

At the beginning of this meeting last evening the chairman invited me to make some introductory remarks following introductory remarks made by him. And in order that it might not appear that I was trying to make two speeches so closely in a row, it was understood that I would not be recognized in this general debate and would waive my seniority and be recognized at the end of the roster instead of at its head.

My eloquent and distinguished colleagues have expressed a wide range of views on the impeachment process, and after this many hours of thoughtful speeches I would be most hesitant to speak at all or to risk trespassing upon the endurance of all of those who have listened to this committee's deliberations, were it not for the immense gravity of the subject matter at hand. I have great respect for any man who occupies the office of the President, but my respect for the Constitution is even greater. All Americans should be grateful for our splendid Constitution, and for the foresight of our Founding Fathers in providing through impeachment a means for removing a President during his term of office when circumstances necessitate so doing.

The Constitution places the responsibility for initiating proceedings for the removal of a President in the House of Representatives. In this case, the House has demanded of this committee a report, with a recommendation concerning whether the House should exercise its impeachment power directed at the removal of President Nixon.

I have listened attentively to those of my colleagues, and learned men and women all, who have argued with great intellect in favor of the impeachment of the President. I remain unconvinced by their arguments. I believe their case is weak, and I am unconvinced as well, I regret to say, by their view of the impeachment process itself.

As the thrust is placed in Congress to safeguard the liberties of the people through the awesome and extraordinary powers to remove a President, so must Congress' vigilance be fierce in seeing that the thrust is not abused. The proper use of the impeachment power depends upon our understanding of its proper purpose under the Constitution.

The Constitution provides that a President may be impeached and tried, convicted, and removed from office for the commission of treason, bribery or other high crimes or misdemeanors.

The meaning of the words treason and bribery are self-evident. They are crimes, high crimes directed against the State. To me the meaning of the words other high crimes or misdemeanors is equally obvious. It means what it says, that a President can be impeached for the commission of crimes and misdemeanors which like other crimes to which they are linked in the Constitution, treason and bribery, are high in the sense that they are crimes directed against or having great impact upon the system of government itself.

Thus, as I see it, the Constitution imposes two separate conditions for removal of a President. One, criminality, and two, serious impact of that criminality upon the Government.

Though we might differ in judgment as to the impact on Government of specific acts, I hope that we would all agree in theory at least that a significant impact on Government is required.

But, some of my colleagues feel that the word crime in the Constitution does not mean crime at all, but merely any conduct which they think or feel has a significant impact on Government. I suggest that they are equally, that they are effectively abandoning altogether the only specific standard set forth in the Constitution for Presidential impeachment.

In doing so, they are left with no definite guideline at all except their own judgment of impact. In this they run the alarming risk of

abusing the very trust which the Founding Fathers so thoughtfully, and I would like to believe prudently, placed in their hands.

Let me give an example of where the danger lies. Last night two articles of impeachment were introduced for adoption by this committee. The second of those articles has been referred to in the debate you have heard as an abuse of power article. It is, in fact, a grab bag of allegations ranging from matters of national security to the subpoenas served on the President by this committee, from the President's administrative oversight of the executive departments of Government, to his public address to the Nation.

The concept underlying this proposed article seems to be that if you cannot make any single charge stick maybe you can succeed in removing the President if you lump all of the charges together.

Were this a court of law, any indictment so broadly drawn would be tossed out of court. But, we are asked to treat the President by a lower standard than would be accorded in a court of law to the lowliest criminal defendant.

That brings me to another point. The standard of proof which is applicable to an impeachment proceeding. In the entire history of our Nation, no man has ever been lawfully convicted of a crime on a standard less than beyond a reasonable doubt. Yet, some of my colleagues and counsel to the committee have urged the application of a lesser standard here. I need not even say, I suppose, that I look dimly upon those suggestions. I believe that it is again being urged that the most basic notions of American justice should be sacrificed.

Much has been said on the evidence of the case and I doubt whether any exposition of my views would add much to what you have heard.

Let me just say that not only do I not believe that any crimes by the President have been proved beyond a reasonable doubt but I do not think the proof even approaches the lesser standards of proof which some of my colleagues, I believe, have injudiciously suggested we apply. And I do not believe that we can strengthen that proof by stacking inferences, one upon another, or by making repeated demands for information from the President which we know we will not, and which he believes in principle he cannot supply and then by trying to draw inferences from a refusal which we have fully anticipated before the demands were even made.

Now, I believe it was perfectly proper for this committee to undertake this inquiry once serious charges of Presidential misconduct had been made, as it is the purpose of impeachment as much honorably to exonerate as to accuse. And by and large I believe this inquiry has been conducted with fairness at the direction of its able chairman.

But, I would urge my colleagues to avoid now in this moment of judgment losing sight of the noble principles which are embodied in our great Constitution and which must guide their conscience.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Hutchinson.

The hour has drawn, we now approach that time when after there has been full and free debate, that we consider the amending of the articles that are proposed for the impeachment of the President of the United States.



However, before proceeding to that phase, which will take place tomorrow, I would like to make a few comments, a few comments of appreciation first of all for the able staff that has very objectively, professionally and with thorough dedication, under the leadership of Mr. Doar, pursued the ordeal and the trying work that was necessary in order to find the facts and present the facts to this committee. And I think that Mr. Doar is to be saluted for his great feel for the desire to have the truth presented to us in a professional and objective way. I think he is a great American who has contributed a great deal to the work of this committee. And along with him a man who has stated before this body that he loves the Constitution above any party, Mr. Jenner. I salute him for his contribution, and all of those who worked with him.

And Mr. Garrison, who of late now has been designated the minority counsel and all of those who worked under your direction who are the unsung, and who came with total dedication, for I recall when I first sought to select a staff and talked with Mr. Hutchinson, I laid down a condition to hiring any member of that staff. And that was that they were to come to this inquiry with no preconceived notion, advocating no position, but advocating only the search for the truth and the presentation of the facts, and this you have done. And I applaud you for the nonpartisan approach. If a few days ago you made a judgment, a judgment based on the facts as you saw them interpreted and as a matter of conscience, giving your professional opinion, I applaud you for the courage that you brought to this kind of conviction. And I think everyone will applaud you for it.

I also want to express my gratitude to the general counsel of our committee, Mr. Zeifman, who has done a remarkable job with his grasp of the total notion of this great proceeding.

But beyond them, I want to applaud the members of this committee, my colleagues. They have demonstrated a capacity to work behind closed doors, if you will, for a period of time searching out the truth, belaboring and toiling and wrestling with the facts, without seeking acclamation, or applause of any sort, because there is none, at the end of the trail, except a sure knowledge and a sure reward that right will be done. And I believe that each of you is deserving of the highest accolade because you reflect upon this body, and especially the Judiciary Committee, the highest, and carry on in that great tradition of this body, notwithstanding those who would have criticized the work of this committee, you have left no stain upon your effort. And I am sure that history will record that what you have done you will have done as a matter of conscience and conviction, worthy of the great responsibility that is yours and that is ours, bringing, as I stated in my opening remarks, the collective wisdom of men and women, a total dedication, and recognizing the terrible and tremendous burden of having to make a decision which will be lasting and for all time, which will prove to the American people.

And as I said on February 6 before the House of Representatives in seeking authorization for this committee to pursue its inquiry, that whatever the result, whatever we conclude, we proceed with care

and with fairness and with decency and with honor, so that all Americans, and those who come after us, will be able to say: That was the right course. There was no other way.

And I applaud each and every one of you. And I know that tomorrow when we consider the articles that were laid before us that we will search and try to find those articles that will truly deal with the impeachable offenses, on what this body has found based on the evidence and the facts, so that a recommendation having been made by this committee in a report being presented to the House of Representatives, we can justify what we have done.

And on this basis, and on this note, let me say that I am proud to be a part of you, to be among you, to be of you. This has to be and shall be one of the greatest experiences of my life, and as I said, I revere the Presidency of the United States of America. I have revered all Presidents and I have searched within my heart and my conscience and searched out the facts and when I test the facts I find that the President of the United States, in accordance with the tests that I feel we must confront, I find that the President must be found wanting. And so tomorrow I shall urge, along with others, the adoption of articles of impeachment. I shall do so with a heavy heart because no man seeks to accuse or to find wanting the Chief Executive of this great country. But, we have had responsibility to meet, and as many of us have said, and I only echo the sentiments of each of us, this has not been a responsibility that we sought, but it has been one imposed upon us and I hope, and trust and pray, that what we do will for all time be that which has been right so that our country may survive not only this test, but tests for all time.

And with this, I declare this meeting recessed until 11 o'clock tomorrow morning.

[Whereupon, at 10:48 p.m., the committee was recessed, to reconvene on Friday, July 26, 1974, at 11 a.m.]

## DEBATE ON ARTICLES OF IMPEACHMENT

### Business Session, Impeachment Inquiry

FRIDAY, JULY 26, 1974

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The committee met, pursuant to notice, at 11:55 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment Inquiry staff present: John Doar, special counsel; Samuel Garrison III, minority counsel; Albert E. Jenner, Jr., senior associate special counsel; Bernard Nussbaum, senior associate special counsel; and Richard Cates, senior associate special counsel.

Committee staff present; Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; Alan A. Parker, counsel; Daniel L. Cohen, counsel; William P. Dixon, counsel; Arden B. Schell, counsel; Franklin G. Polk, associate counsel; Thomas E. Mooney, associate counsel; Michael W. Blommer, associate counsel.

The CHAIRMAN. The committee will be in order.

And pursuant to the rule, we will proceed with consideration of the proposed Articles of Impeachment.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Mr. Chairman, I have—

The CHAIRMAN. For what purpose?

Mr. McCLORY. I have a motion at the clerk's desk which I have distributed among the members, Mr. Chairman.

The CHAIRMAN. The clerk will read the motion.

The CLERK [reading]:

Mr. McClory moves to postpone for 10 days further consideration of whether sufficient grounds exist for the House of Representatives to exercise its constitutional power of impeachment unless by 12 noon, eastern daylight time, on Saturday, July 27, 1974, the President fails to give his unequivocal assurance to produce forthwith all taped conversations subpoenaed by the committee which are to be made available to the district court pursuant to court order in *United States v. Mitchell*.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. I am offering this motion, Mr. Chairman, to defer the conclusion of our proceedings for a period of 10 days, providing that we get assurance from the President by tomorrow noon that 63 of the 64 tapes which the Supreme Court has ordered to be made available to the district court, to Judge Sirica, are also made available to this committee.

Sixty-three of the 64 tapes which were involved in the Supreme Court proceeding were also requested by us. We subpoenaed those, and the President has failed to make them available to us.

It is my understanding that these contain highly relevant materials, highly relevant information which will be valuable to us in coming to a fair and a complete decision with respect to this impeachment inquiry. And it seems to me for us to conclude our proceedings without having available to us, at least without having tried to make available to us this additional information, would not be consistent with our important role here.

I might say, Mr. Chairman, that I would press more vigorously for this if I had some assurance that these tapes would be made available. I might say that Wednesday, following the Supreme Court decision, I communicated directly and personally with Mr. McCahill, who is the associate attorney to Mr. St. Clair, and urged him to make this material available to us and give us some immediate response. Also I watched the TV press conference of Mr. St. Clair, and waited anxiously for Mr. St. Clair to make some offer to make the materials available to our committee, which the President is now compelled to do by the Supreme Court order to make available to the district court. I did not hear any such commitment on his part. And I have the strong feeling that there is no intention to provide the materials to this committee.

I think, nevertheless, that this motion should be made, this opportunity should be offered, because later I expect to offer an article which would suggest that the President should be impeached on the basis of his contempt of the Congress in failing to respond to the subpoenas that we have directed to him for relevant and necessary materials which we require for a complete and a conclusion of our inquiry. And, therefore, Mr. Chairman, I move the adoption of the motion.

Mr. DENNIS. Mr. Chairman?

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. The gentleman from Texas, Mr. Brooks, is recognized for 5 minutes.

Mr. BROOKS. Thank you, Mr. Chairman. I rise in opposition to the motion, and would point out that this order by the Court is a very narrow order which is restricted to a criminal prosecution. It provides only for in camera inspection by the judge. There is nothing in this decision that gave any assurance whatsoever that this committee would ever receive any of these tapes.

This committee has written to the President, has written again, has subpoenaed the President, has subpoenaed him again. He has refused to send this and other materials. We stand ready to receive any of these tapes or material now, and have been ready for some weeks.

I want to say that we have been imminently fair to the President in this regard. This order does not give any assurance of the committee

receiving any additional information. I don't think that the public would appreciate the delay of this important proceeding. I would be opposed to it. I would ask the members to vote against this motion for delay.

Mr. McCLORY. Would the gentleman yield to me?

Mr. BROOKS. I will be delighted to yield to my friend from Illinois.

Mr. McCLORY. I want to agree with the gentleman that there is nothing implicit in the Court's order which would indicate any obligation on the part of Judge Sirica to provide us with the material. As a matter of fact, the Supreme Court indicates that they should be used for the sole purpose of aiding and for the benefit of the defendants in the Watergate coverup trials.

But, I would also indicate that we can provide the same kind of an in camera mechanism through our counsel, with the cooperation of Mr. St. Clair, to see that no national security information is divulged, but we only would be interested in the relevant materials regarding the subject of our inquiry.

Mr. BROOKS. I yield back the balance of my time.

The CHAIRMAN. I recognize the gentleman from Illinois, Mr. Railsback, for 5 minutes.

Mr. RAILSBACK. Mr. Chairman, I have some questions that I would like to put to the gentleman, my colleague from Illinois. What I wonder about is: Is it not a fact that under the Supreme Court order that Judge Sirica will be required to screen in camera all of the 63 or the 64 conversations to determine if there are sensitive or nonrelevant or other privileged matters? And I am just wondering how much time does the White House have to turn the tapes over, first of all to Judge Sirica, and then I am wondering, how long is it going to take him from a physical standpoint to listen to the tapes, to screen them in camera to determine the possible relevance?

Mr. McCLORY. Well, I will answer the gentleman in this way. As I understand it, Judge Sirica has ordered the materials delivered to him within 10 days. And I would say this, that if the information contained in these tapes, and I understand about three-fourths of it relates to the Watergate affair, it would seem to me that we are going to do a disservice by not getting this material if it is available. Now, the reason—

Mr. RAILSBACK. Can you just—

Mr. McCLORY. My motion is directed directly to the President and not Judge Sirica, you see.

Mr. RAILSBACK. Can I just say to my friend that were it not for this late date, after all of these deliberations, and with the problems that I think are very apparent, I would be inclined to agree with you. And, as a matter of fact, I think perhaps if we could ascertain that the House itself, after we move, would have a reasonable opportunity, or a reasonable possibility that they could get a hold of those materials, perhaps the House should act.

Let me just say one other thing. There is another tape, a September 15 tape, that it is my understanding now has somehow been obtained according to a newspaper person. I will not discuss what the allegations or the reports that have been made about that tape are, but it is more apparent than ever to me that if that newspaper account is

accurate, it is just absolutely essential and relevant that either the House or the Senate get a hold of that tape, because there are very, very serious allegations that can be made about that tape.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. I recognize the gentleman from New York, Mr. Smith, for 5 minutes.

Mr. SMITH. Mr. Chairman, I speak in support of the motion of the gentleman from Illinois. As the chairman knows, I was one of the six who voted to submit our subpoenas for Presidential tapes to the court, and the will of the committee was otherwise, that we would not go into court and ask the court to enforce our subpoenas.

I have always thought that we should have done that, and the recent Supreme Court decision in going to the Special Prosecutor's motion enforces that opinion in my mind. I think that in the state of the evidence that we have had presented to this committee, that we should make every effort to secure these tapes if we can, and it seems to me that the motion by the gentleman from Illinois is at least in that direction, and I support it.

Mr. DENNIS. Mr. Chairman?

Mr. COHEN. Mr. Chairman?

A VOICE FROM AUDIENCE. Why isn't the President being impeached for war crimes? Aren't lives more important than tapes?

The CHAIRMAN. Please be in order, and be silent or otherwise you will be ejected, removed from the room.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. I recognize the gentleman from California, Mr. Danielson. And there will be no further outbursts from the audience.

Mr. DANIELSON. Mr. Chairman, I oppose the motion offered by the gentleman from Illinois. The Supreme Court ruling very properly did not make any reference to these impeachment proceedings as it should not have, since it is apparent on the face of our Constitution that the Supreme Court has no jurisdiction what ever to inject itself into these proceedings.

The Court's opinion—decision—was absolutely proper and in keeping with its constitutional jurisdiction.

A VOICE FROM AUDIENCE. Mr. Chairman, I demand an answer.

Mr. DENNIS. Take him out.

The CHAIRMAN. Will the—

A VOICE FROM AUDIENCE. We must speak for the people of Cambodia and the people of Vietnam, people who are still—

The CHAIRMAN. The committee will be in order.

Mr. DANIELSON. Mr. Chairman, continuing—

The CHAIRMAN. The gentleman from California.

Mr. DANIELSON. Thank you, Mr. Chairman. I would also like to point out, as have my colleagues that pointed it out, we have subpoenaed these tapes, these conversations long weeks ago, and it has been within the power of the President to produce them if he chose to do so. We are ready, willing, and I am sure agreeable to receiving any information which he wishes to present, but there is no forum through which we should proceed other than the one which the Constitution places upon us. This committee, this House of Representatives, has the full jurisdiction.

Last, I would like to point out that the gentleman's motion is a truncated motion. The last six words of the last line, and the last line itself, would limit us to the tapes which the court has ordered to be available to the district court pursuant to the Supreme Court order. It is my understanding that the tapes which we have heretofore subpoenaed, and which we deem to be relevant are far larger in number. They cover a greater period of time than those which are included within the gentleman's motion. I therefore——

Mr. McCLORY. Would the gentleman yield?

Mr. DANIELSON. Yes.

Mr. McCLORY. The gentleman is exactly right. I understand we have subpoenaed 147 tapes, and this would only cover 63 of those.

Mr. DANIELSON. That is correct. I thank the gentleman for confirming my fear here. This is a truncated order at best. If we are going to have some compliance, some cooperation from the White House, I submit that we should have full compliance and full cooperation. This is only half a loaf, and we are in a situation where we are entitled to the full loaf. I therefore urge my colleagues to defeat this motion.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. I recognize the gentleman from New Jersey, Mr. Sandman, for 5 minutes.

Mr. SANDMAN. Mr. Chairman, I oppose the resolution of my friend from Illinois. I can hardly see how we can delay this proceeding to receive some tapes when this very same committee voted down the requirements to have the most important witness of them all come before the committee and testify live. If we did not have 1 day to listen to Howard Hunt, the subject matter of the entire transaction of the coverup, we have no business trying to put this thing off to listen to some more tapes.

Now, I do not subscribe to the fact that the President did not honor our subpoenas, and I have said so from the very beginning. I think that he should have. For whatever reason he used, whether he is right or wrong, we did not get those tapes. Whether we received truckloads of tapes for or against it is not going to change the outcome of the vote here, and everybody knows it. So, let us get on. You have the votes, move the resolution, and let's go home.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. I recognize the gentleman from Indiana, Mr. Dennis, for 5 minutes.

Mr. DENNIS. Mr. Chairman, this appears to me to be an exceedingly moderate resolution, which really ought to draw the support of everyone here. All it says is that if the President gives us assurances by tomorrow noon, that he is going to produce forthwith the matter which is to be given to the Special Prosecutor, that then we will give him the short period of 10 days in which to do so. Now, that is a very moderate proposition. It seems to me axiomatic that in the conducting of any investigation you ought to get all the evidence you can get, and certainly in a matter of this importance, you ought to. I indicated my position on the basis of the evidence, and as it now stands in my remarks yesterday. But, my view could be changed if there is something on these tapes that ought to change it, and there may be,

On the other hand, I would hope that those who are now ready to impeach could have their views modified if there were something on these tapes which was, indeed, exculpatory. We owe it to ourselves, and we owe it to the country to get this evidence if we can do it, without any immoderate delay, and I might point out in reference to what my friend, Mr. Brooks from Texas, says, that this is addressed to the President of the United States. If he gives us this assurance, and he can deliver these tapes if he wants to, he is not bound by the order in the way the Special Prosecutor is, and I suggest there are maybe half a dozen of these tapes at the most which are really important, and the President of the United States knows which ones they are, and he knows what's on them. And we know which ones they are, but we don't know what is on them.

Now, if he tells us by tomorrow noon that he is going to give them to us, we are going to know what's on them, and we certainly ought to be able to wait a few days in order to get that. And it isn't going to look very good for this committee if there is something really important there, or for the individual members of this committee, and we have to vote one way or the other, which we later find, and these are going to come out within the relatively near future anyhow, would have changed our situation.

Now, the question of waiting 6 weeks or something, I realize we have got an important matter here, and that we cannot do that, but this is a very short delay, predicated upon a promise from him to produce. I just suggest to my friends and colleagues that we really ought to take advantage of that for our own sakes, if nothing else. It is the obviously correct thing to do. So, I support the gentleman's motion, and I will yield to him.

Mr. McCLORY. I thank the gentleman for yielding for a brief comment, and that is that the 10 days begins today. It does not begin tomorrow noon, it begins today, so it is really a very brief period.

I join with the gentleman in expressing disappointment that we have not had better cooperation, and I also, I know that the suspicion is that the tapes were not produced because they contain adverse information as far as the President is concerned. But, what if they do provide exculpatory information which would change our minds and provide for the President to be exonerated on one or more of the charges? It would seem to me it would be extremely embarrassing and awkward for us to have made a decision without the benefit of all of the evidence, and I thank the gentleman for yielding.

Mr. COHEN. Mr. Chairman?

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. I recognize the gentleman from Ohio, Mr. Seiberling.

Mr. SEIBERLING. Mr. Chairman, I remember some years ago when a legal trial was being argued before one of our great justices, Learned Hand, and the attorneys kept wanting to file motions, and rearguments and so forth, and finally he advised them that the court would accept no further motions or papers in the case, and the lawyers protested, and he said, gentlemen, some concession must be made to the shortness of human life.



Now, actually our first request for tapes from the President was on February 25. If my arithmetic is correct, that is almost exactly 6 months ago. The tapes are in the full possession of President Nixon. At any time he can walk in or send Mr. St. Clair into this committee and deliver all of the tapes, not just the ones covered by the Supreme Court. He is in complete control of that. He has heard presumably the arguments that were advanced in this committee.

He has had access to the evidence considered by this committee, and he knows what would be exculpatory and that which would tend to disprove that evidence if he has further material that would tend to disprove it. And I submit to the gentlemen and ladies of this committee that there is absolutely no reason why at any point in our deliberations or in the deliberations of the House of Representatives, which are certainly going to take more than 10 days, there is no reason why the President cannot walk in and deliver to us every piece of evidence that we have subpoenaed. And we know full well that when that happens, and if it happens, we will stop our proceedings and consider the evidence. But, until that happens, I do not see why we should fool around with giving further opportunity to delay to a President who has shown that he will take every possible means to delay and drag out, and obfuscate these proceedings. And I think this committee would look foolish in the eyes of the Congress and the world if we allowed ourselves at this stage in the game to be sucked into that kind of a tactic.

The CHAIRMAN. I recognize the gentleman from Iowa, Mr. Mayne.

Mr. MAYNE. Thank you, Mr. Chairman.

I emphatically oppose this motion for an additional 10 day delay. As you know, I have consistently urged that this proceeding be expedited. I was critical, perhaps unfairly so, that the committee did not get organized and underway more promptly after we were given this mandate in October, and I have repeatedly urged that these proceedings be expedited since then.

It seems to me that the American people are very justifiably impatient that the matter not drag on further. I can see no justification that has been made for another delay, and I, therefore, urge that we proceed promptly, and that this motion for delay be defeated. And I am happy to yield to the gentleman from New York.

Mr. FISH. I thank the gentleman for yielding.

Mr. Chairman, if I felt for a minute that the delay sought here was a question of fairness to the President, I would not hesitate to support the motion. But, I do not think this is the case, as I think very straightforwardly put, there has been every opportunity, including the opportunity to come in with the tapes today, or tomorrow, without the necessity of this resolution.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. I recognize the gentleman from Maryland, Mr. Hogan, for 5 minutes.

Mr. HOGAN. Thank you, Mr. Chairman.

All of us are obviously physically and mentally and emotionally drained from the ordeal that we have been enduring, and now that we are up on the threshold of facing this historic responsibility, under-

standably we want to get it over with as quickly as possible, and have it resolved. And I share that feeling. And the day before yesterday if this motion had come before the committee I would have opposed it. But, in the interim, as you know, a unanimous Supreme Court decision came down indicating that the President's claim of executive privilege with respect to the prosecution going on in U.S. district court has no validity.

Now, if that claim for executive privilege has no validity, then certainly his claim for executive privilege in response to the subpoenas from this committee, which has an overriding constitutional right to challenge that, we have a much stronger case than Mr. Jaworski had. Judge Sirica indicates that he is going to insist that the President comply within 10 days. And Mr. St. Clair indicated that the President wanted some time to listen to the tapes.

I do not really see any reason for the President to listen to the tapes. I think it is more important that the prosecution and we have access so that we can listen to those tapes.

Now, some of my colleagues have said here today that they see no reason for waiting. I see a very important reason for waiting. If the tapes are given to us, and I do think that we should send another letter reminding the President of the Supreme Court's decision so we are on record, and if the material does, in fact, come to us—and I will admit that I am not overly optimistic—perhaps it will be more damaging to the President's case, in which eventuality we may vote out a resolution from this committee by a vote of 38 to nothing. I think that that would strengthen the case in the House and in the Nation. If on the other hand, if the material is exculpatory, perhaps no impeachment resolution would be voted out at all, and we in the House, in the Congress and the country would be spared the ordeal of this impeachment.

So, I think it is reasonable for us to delay for a 10-day period so that we can at least give the President the opportunity to do what most of us on this committee thought that he should have done all along, and that is to respond to our subpoenas, because there can be no doubt in his mind, or anyone else's mind, that his claim of executive privilege for refusing to comply no longer has any legal support whatsoever.

Mr. EILBERG. Mr. Chairman?

The CHAIRMAN. I recognize the gentleman from New York, Mr. Rangel.

Mr. RANGEL. Mr. Chairman, I move the previous question.

The CHAIRMAN. Before the gentleman moves the previous question, the gentleman from Maine had been asking for recognition. Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman. I would like to speak in opposition to the motion. I think that in view of the Supreme Court's decision that there would be no hesitancy on the part of the President to turn over this information to the committee, because Mr. Hogan has just so eloquently stated, the Supreme Court has cut away any possible basis for withholding that information. I, like the rest of my colleagues, would like to have that information. We have waited since February for it, but it seems to me that there is a time for deliberation, a time for debate, and also a time for decision, and today is that day.

We are a continuing investigative body, and we stand ready to re-

ceive and to screen all of this information and to report it to the House of Representatives, exonerating information as well as incriminating. And I suspect that the House, if it is in doubt after the evidence has been presented to it can also refer the matter back and refer it back to this body for further investigation and for further recommendation.

But, in the meantime I think we owe it to the American people, after all of the calls for an expeditious resolution of this matter, to go forward today. And I will, therefore, urge my colleagues to reject the motion.

Mr. EILBERG. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. The question is—

Mr. EILBERG. Mr. Chairman?

The CHAIRMAN. For what purpose does the gentleman seek recognition?

Mr. EILBERG. May I just make a brief comment, Mr. Chairman?

The CHAIRMAN. The gentleman is recognized.

Mr. EILBERG. Mr. Chairman, I am opposed to the motion. I would like to add a question or a problem that has not been discussed as yet, and that is my concern, and I am sure the concern of many others, that every day is important. I am concerned about the problems that might arise in the event that the House concurs and we do impeach, that the trial would be held and go over beyond the election, and possibly into the next year. And we run into all sorts of problems if the trial goes beyond the election of this year, and possibly into next year. And I think we should give the Senate the maximum opportunity to dispose of the matter before the election.

The CHAIRMAN. Is the gentleman from Ohio seeking recognition?

Mr. LATTI. Yes, Mr. Chairman.

The CHAIRMAN. The gentleman from Ohio is recognized for 5 minutes.

Mr. LATTI. I thank the gentleman from New York for withholding his motion for a moment.

I might say that I do not have the infinite wisdom of knowing at this point what is in those tapes, and I would like to listen to them because it might have some bearing on my ultimate decision in this matter. But, I take this time to ask the gentleman from Illinois specifically what he is after in this motion? You would like to have 10 additional days for the President to comply?

Mr. McCLORY. Right. I think that it would be a mistake if the information could be made available that we would not receive it and not consider it, and so I would think it would be important for us to have this evidence, and at least give this opportunity for the President to provide us with the additional information.

I might say that there has not been up to this present time any indication that the President would make the information available to us, and that is why I am just suggesting until tomorrow noon. It is less than 24 hours from now for him to make a firm commitment to us so that he would make this information available.

Mr. LATTI. I thank the gentleman, but I just want to call his attention before we vote, to the wording of his motion. You move to postpone for 10 days unless the President fails to give his assurance to produce the tapes. So, if he fails tomorrow, we get 10 days. If he

complies, we do not. The way you have it drafted I would suggest that you correct your motion to say that you get 10 days providing the President gives his unequivocal assurance to produce the tapes by tomorrow noon.

Mr. McCLORY. I think the motion is correctly worded, it has been thoughtfully drafted.

Mr. LATTA. I would suggest you rethink it.

The CHAIRMAN. Would the gentleman from Ohio yield?

Mr. LATTA. I will be happy to yield.

The CHAIRMAN. I would just like to point out that we had better set the record straight, and I think the gentleman from Illinois, while he says we have had no indication that the President would comply, we have had every indication, and not just indications, but a clear demonstration, and a clear reply, and a response from the President to this committee by letter of May 22 that he would decline to supply this committee with any material, that we had the complete story of Watergate, that he would respectfully decline any further subpoenas that this committee would issue. So, there is no question whatsoever in the mind of this gentleman that the President has no intention whatsoever of complying. It has been a period of time since letter after letter was sent to the President. We have been fair. We have been patient. We have sought not only through letter, but through various requests, and I think it would be an idle, futile gesture for us to delay this matter of moment at this time when we have before us an issue to decide, knowing full well that we have the President's full response, which is unequivocal, categorical, and as decisive as anyone would want it to be.

So, I would urge that this motion be defeated. And the gentleman—

Mr. LATTA. Just a minute, Mr. Chairman. You are on my time.

Mr. McCLORY. Would the gentleman yield. Would the gentleman from Ohio yield?

Mr. LATTA. I promised to yield to Mr. Maraziti.

Mr. MARAZITI. Thank you, Mr. Latta.

I would like to thank the gentleman from New York for withholding action on his motion.

Let me briefly say, Mr. Chairman, that I support this motion. I know it is important that we conclude these proceedings at the earliest possible time but I think it is also important that we get all the possible information we can. And I concur with Mr. Hogan that perhaps several weeks ago would have been a different story, but now we have a decision of the U.S. Supreme Court saying very clearly that the tapes must be produced and if it is possible, but even a mere possibility, that we will have these tapes, I think we should make the attempt.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. The gentleman from New York.

Mr. RANGEL. I move the previous question.

Mr. LATTA. Will the gentleman withhold?

The CHAIRMAN. Will the gentleman from New York withhold his motion?

Mr. RANGEL. Yes, sir, Mr. Chairman.

The CHAIRMAN. I recognize Mr. Mann.

Mr. MANN. Mr. Chairman, I think it is important that the committee vote on a resolution that properly expresses the intent of the gentleman from Illinois and if he will examine his motion he will find that the words "fail to" need to be stricken and—

Mr. McCLORY. If the gentleman will yield, the motion is correctly worded. It provides for a postponement for 10 days unless the President fails tomorrow to give his assurance, so there is no postponement for 10 days if the President fails to give the assurance, Just 1 day. I think it is correctly drafted. I have had it drafted by counsel and I was misled originally, too, but it is correctly drafted. There is a 10-day postponement unless the President fails to give assurance. If he does give assurance, there is a 10-day delay. If he fails to give it, there is only a 24-hour or there is only a—23½ hour day.

Mr. RANGEL. Mr. Chairman?

Mr. McCLORY. I think the Members understand what they are voting on.

Mr. DENNIS. Will the gentleman yield to me?

Mr. RANGEL. Mr. Chairman—

Mr. DENNIS. The gentleman yielded to me, Mr. Rangel. Excuse me. I know you did not realize that fact.

Mr. RANGEL. No; I did not.

Mr. DENNIS. He did not. I realize that.

What Mr. Mann says and what Mr. Latta says is true, in my opinion. It would be much better drafted if you said "Provided that" or "unless he does not," or something, but I think nevertheless, the gentleman from Illinois is correct, that although this is a very backhanded way of stating it, it does in fact state it because it says he gets 10 days unless he fails to give assurance which is a backhanded way of saying he gets 10 days if he does not—if he—well, it is a backhanded way of stating what the gentleman is trying to state. It could be improved but what he is doing is nevertheless there.

Mr. MANN. I guess we can settle for it as long as we all understand it, Mr. Chairman.

The CHAIRMAN. Will the gentleman yield?

Mr. RANGEL. Mr. Chairman, I think this motion itself has provided sufficient delay and I move the question.

The CHAIRMAN. The question is on the motion of the gentleman from Illinois. All those in favor of adopting the motion, please signify by saying aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed.

[Chorus of "noes."]

The CHAIRMAN. The noes appear to have it.

Mr. McCLORY. Mr. Chairman, I call for the yeas and nays.

The CHAIRMAN. A call for the yeas and nays is demanded and the clerk will please call the roll. All those in favor of the motion please say aye. All those opposed, no. The clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.  
 Mr. KASTENMEIER. No.  
 The CLERK. Mr. Edwards.  
 Mr. EDWARDS. No.  
 The CLERK. Mr. Hungate.  
 Mr. HUNGATE. No.  
 The CLERK. Mr. Conyers.  
 Mr. CONYERS. No.  
 The CLERK. Mr. Eilberg.  
 Mr. EILBERG. No.  
 The CLERK. Mr. Waldie.  
 Mr. WALDIE. No.  
 The CLERK. Mr. Flowers.  
 Mr. FLOWERS. No.  
 The CLERK. Mr. Mann.  
 Mr. MANN. Aye.  
 The CLERK. Mr. Sarbanes.  
 Mr. SARBANES. No.  
 The CLERK. Mr. Seiberling.  
 Mr. SEIBERLING. No.  
 The CLERK. Mr. Danielson.  
 Mr. DANIELSON. No.  
 The CLERK. Mr. Drinan.  
 Mr. DRINAN. No.  
 The CLERK. Mr. Rangel.  
 Mr. RANGEL. No.  
 The CLERK. Ms. Jordan.  
 Ms. JORDAN. No.  
 The CLERK. Mr. Thornton.  
 Mr. THORNTON. No.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. No.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. No.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. No.  
 The CLERK. Mr. Hutchinson.  
 Mr. HUTCHINSON. Aye.  
 The CLERK. Mr. McClory.  
 Mr. McCLORY. Aye.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. Aye.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. No.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. No.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. No.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. Aye.  
 The CLERK. Mr. Fish.  
 Mr. FISH. No.  
 The CLERK. Mr. Mayne.  
 Mr. MAYNE. No.

The CLERK. Mr. Hogan.

Mr. HOGAN. Aye.

The CLERK. Mr. Butler.

Mr. BUTLER. Aye.

The CLERK. Mr. Cohen.

Mr. COHEN. No.

The CLERK. Mr. Lott.

Mr. LOTT. No.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. Aye.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. Aye.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. Aye.

The CLERK. Mr. Latta.

Mr. LATTA. Aye.

The CLERK. Mr. Rodino.

The CHAIRMAN. No.

The clerk will report.

The CLERK. Mr. Chairman, 11 members have voted aye, 27 members have voted no.

The CHAIRMAN. And the motion is not agreed to. And pursuant to the resolution, the clerk will read.

The CLERK [reading]:

*Resolved*, That Richard M. Nixon, President of the United States—

Mr. FLOWERS. Mr. Chairman. Mr. Chairman. Could we have a copy of what he is reading?

The CHAIRMAN. I understand that the copies have been distributed.

Mr. FLOWERS. I don't have a copy.

The CHAIRMAN. Those copies were distributed Wednesday night.

The clerk will please proceed with the reading.

The CLERK [reading]:

*Resolved*, That Richard M. Nixon, President of the United States, is impeached for high crimes and misdemeanors and that the following articles of impeachment be exhibited to the Senate.

Articles of Impeachment exhibited by the House of Representatives of the United States of America. In the name of itself and of all of the people of the United States of America, against Richard M. Nixon, President of the United States of America, in maintenance and support of its impeachment against him for high crimes and misdemeanors.

Article I—

Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. Mr. Sarbanes.

Mr. SARBANES. Mr. Chairman, I have an amendment in the nature of a substitute to Article I of the proposed resolution. Mr. Chairman, the amendment is at the clerk's desk and a copy has been distributed to each member.

The CHAIRMAN. I ask the—the clerk will please read. For what purpose does the gentleman seek recognition?

Mr. McCLORY. Mr. Chairman, I wanted to ask your advice as to the procedure. It would be my understanding that the entire resolution as—it is on the clerk's desk and it has been distributed—might be read in full and then be open for amendment at any point. In other words, I am wondering whether in order to offer amendments we have

to make them at the time that the article is being proposed or can we not have the entire article or the two articles read and then the opportunity for offering substitute articles or amended articles at that time. What is the procedure that we are about to follow?

The CHAIRMAN. The clerk is at this time pursuant to the resolution which was adopted by this committee, reading the articles for amendment and at the present time the gentleman from Maryland has offered an amendment in the nature of a substitute, and that would be subject to amendment and open for amendment.

Mr. Sarbanes.

Mr. SARBANES. Mr. Chairman, my amendment is at the clerk's desk and I would ask that the clerk proceed with the reading of the amendment.

Mr. DENNIS. Mr. Chairman, parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. DENNIS. Of course, would it not be necessary either to read the original Donohue resolution before the substitute were offered or else to obtain unanimous consent or a vote that it be considered as read and then offer the substitute, neither of which has been done?

The CHAIRMAN. In view of the fact that the rule provides that we deal with each article, the substitute amendment is in order at this time and unless there is offered an amendment to the substitute of the gentleman, the clerk would continue with the reading of this article.

Mr. DENNIS. Well, you are going to read the substitute, then?

The CHAIRMAN. The substitute is now being read.

Mr. DENNIS. I respectfully suggest that for the reasons stated, it is not really in order at this point.

Get unanimous consent and then he can do it, but I——

The CHAIRMAN. The rules would provide that the clerk would read——

Mr. DENNIS. The original. That is the point.

Mr. HUNGATE. Mr. Chairman, might it be in order to seek unanimous consent that it be considered as read and open to amendment at any point? We did receive it Wednesday night to afford us an opportunity to study them. We are, of course, talking about article I at this point.

Mr. McCLORY. Mr. Chairman, when we opened our proceedings Wednesday night, we did so on the basis that since we were going to have general debate with regard to articles that were distributed, that we would forego the actual reading of the proposed articles at that time.

Now, it seems to me for the benefit of all of us, those who are listening in and looking in and those of us on the committee, it would be appropriate to now have the proposed articles read and then open for amendment at any point, at which time the gentleman could more appropriately offer his substitute article I. I would think that would be the more orderly procedure, Mr. Chairman.

Mr. SARBANES. Well, the amendment that has been offered is in the nature of a substitute to all of article I.

Mr. McCLORY. I understand.

Mr. SARBANES. The procedure which the gentleman suggests would in effect require a reading of language for which a complete substitute is being offered.



Mr. McCLORY. A reading and an understanding of the article I as proposed, and then we would—then we would read and understand your substitute, Mr. Sarbanes.

I am not objecting to the offering. I just think we should have the benefit of the original article before we consider the substitute.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Just a minute. The Chair is conferring with the parliamentarian.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. Thank you, Mr. Chairman.

I would ask unanimous consent that the original article be considered as having been read and we can then proceed with the reading of the substitute offered by Mr. Sarbanes.

Mr. McCLORY. Well, reserving the right to object, Mr. Chairman—

The CHAIRMAN. Yes.

Mr. McCLORY [continuing]. And the only reason I reserve the right to object, and I may feel impelled to object, is that it seems to me important for the members and others to realize what the proposed article is that we are considering before we go into the question of a substitute or a different article.

Mr. BROOKS. Well, to my friend, let me—

Mr. McCLORY. We did forgo my reservation. We did forgo—

Mr. BROOKS. Let me reply to my distinguished friend and say we have had this document before us for some 48 hours now, and I think that it would be just burdensome to read it in its entirety and then to offer the substitute by Mr. Sarbanes, and I think in the interests of time and the fullest consideration of the current matter that the—

Mr. McCLORY. I appreciate the—

Mr. BROOKS [continuing]. Gentleman would withdraw any objection—

Mr. McCLORY. No. I am not going to withdraw my reservation. I am going to urge the gentleman not to—to ask for its unanimous consent because I think that we should have it read aloud. I do not think that is too much to ask.

Mr. BROOKS. I did not ask for unanimous consent. I asked unanimous consent that the article be considered as read.

Mr. McCLORY. I will object.

The CHAIRMAN. Objection is heard.

Mr. BROOKS. I move that the article be considered as having been read.

Mr. KASTENMEIER. Mr. Chairman?

Mr. BROOKS. All right. I will withdraw it.

The CHAIRMAN. The clerk will read the articles and at any time the gentleman from Maryland can at that time ask for unanimous consent, and move the adoption of his article as a substitute.

Mr. KASTENMEIER. Mr. Chairman, parliamentary inquiry.

Is not the rule of the House that once, for example, a title or a bill is—the reading on it is commenced that a substitute is in order without a reading?

The CHAIRMAN. The gentleman is absolutely correct. And that is what is attempted to be done at this time.

So, Mr. Sarbanes' amendment is in order at this time in the nature of a substitute. The only deficiency is that the clerk did not begin to read one word of the proposed article and if the clerk would do so, then we can proceed and Mr. Sarbanes can offer his amendment at that time in the nature of a substitute.

The CLERK [reading]:

Article I.

It is—

MR. SARBANES. Mr. Chairman?

The CHAIRMAN. The gentleman from Maryland.

MR. SARBANES. I move that the article be considered as read. I have an amendment in the nature of a substitute to article I of the proposed resolution which is at the clerk's desk, and which I offer.

The CHAIRMAN. The gentleman is recognized, and the clerk will read the substitute.

The CLERK [reading]:

Article I.

In his conduct of the office of President of the United States, Richard M. Nixon, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has prevented, obstructed, and impeded the administration of justice, in that:

On June 17, 1972, and prior thereto, agents of the Committee for the Re-Election of the President—

MR. FLOWERS. Mr. Chairman, parliamentary inquiry.

I believe the panel is laboring under what I believe to be the false impression that this substitute will be read in full and open for amendment at any point.

The Chair has not made such a ruling and I would suggest that the parliamentary situation—I ought to ask the Chair's ruling if there is an amendment proposed, it must be proposed at the point the proposal would come up, and I do believe the panel is laboring under the impression that the entire article will be read and open for amendment at any point.

The CHAIRMAN. The gentleman is advised that the substitute is open for amendment at any point.

MR. FLOWERS. Well, Mr. Chairman, I respectfully suggest that that is the first time the Chair has ruled that way and you are saying it is open for amendment as it is being read or it will be read—

The CHAIRMAN. That is correct.

MR. FLOWERS. Well, it is not open for amendment at any point until you reach that point, then; is that right, Mr. Chairman?

The CHAIRMAN. Well, the whole amendment or the whole article would be read, but it would then be amended at any point, open for amendment at any point.

MR. FLOWERS. After the reading of the reading of the entire article.

The CHAIRMAN. Correct.

MR. FLOWERS. That is the Chair's ruling now?

The CHAIRMAN. That is the ruling of the Chair.

MR. FLOWERS. I thank the Chair.

The CHAIRMAN. The clerk will proceed.

The CLERK [reading]:

Committed illegal entry of the headquarters of the Democratic National Committee in Washington, District of Columbia, for the purpose of securing political intelligence. Subsequent thereto, Richard M. Nixon, using the powers of his high office, made it his policy, and in furtherance of such policy did act directly and personally and through his close subordinates and agents, to delay, impede, and obstruct the investigation of such illegal entry; to cover up, conceal and protect those responsible; and to conceal the existence and scope of other unlawful covert activities.

The means used to implement this policy have included one or more of the following:

(1) making false or misleading statements to lawfully authorized investigative officers and employees of the United States;

(2) withholding relevant and material evidence or information from lawfully authorized investigative officers and employees of the United States;

(3) approving, condoning, acquiescing in, and counseling witnesses with respect to the giving of false or misleading statements to lawfully authorized investigative officers and employees of the United States and false or misleading testimony in duly instituted judicial and congressional proceedings;

(4) interfering or endeavoring to interfere with the conduct of investigations by the Department of Justice of the United States, the Federal Bureau of Investigation, and the Office of Watergate Special Prosecution Force;

(5) approving, condoning, and acquiescing in, the surreptitious payment of substantial sums of money for the purpose of obtaining the silence or influencing the testimony of witnesses, potential witnesses or individuals who participated in such illegal entry and other illegal activities;

(6) endeavoring to misuse the Central Intelligence Agency, an agency of the United States;

(7) disseminating information received from officers of the Department of Justice of the United States to subjects of investigations conducted by lawfully authorized investigative officers and employees of the United States, for the purpose of aiding and assisting such subjects in their attempts to avoid criminal liability;

(8) making false or misleading public statements for the purpose of deceiving the people of the United States into believing that a thorough and complete investigation had been conducted with respect to allegations of misconduct on the part of personnel of the Executive Branch of the United States and personnel of the Committee for the Re-election of the President, and that there was no involvement of such personnel in such misconduct; or

(9) endeavoring to cause prospective defendants, and individuals duly tried and convicted, to expect favored treatment and consideration in return for their silence or false testimony, or rewarding individuals for their silence or false testimony.

In all of this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice and to the manifest injury of the people of the United States.

Wherefore Richard M. Nixon, by such conduct, warrants impeachment and trial, and removal from office.

The CHAIRMAN. The gentleman from Maryland is recognized.

Mr. SARBANES. Mr. Chairman, I would like to take a moment or two to speak on the substitute. It, of course, sets out a substitute for article I of the resolution of impeachment.

I think perhaps the thing that I could do that might be most helpful to the members of the committee is try to review very quickly the changes encompassed in this substitute as compared with article I as it was introduced on Wednesday evening. I appreciate the fact that the members of the committee have reviewed carefully article I as introduced on Wednesday evening and in fact this substitute is in response to that careful examination of article I which has taken place. It is an effort to clarify language, clear up concepts, and place this matter in a position where the debate can go more to the

substance and less to the form of the article as it is before the committee.

If the members will follow the original article and will follow the substitute, there is very little change in paragraph 1 other than to clarify the language, "The President of the United States."

We are using throughout "Committee for the Re-election of the President" which is, of course, its proper name and such changes in official references are also made with respect to the Department of Justice.

There is stricken in paragraph 2 the phrase "has made it his continuing policy to act" and alternative language inserted so that the sentence reads, "Subsequent thereto, Richard M. Nixon, using the powers of his high office, made it his policy, and in furtherance of such policy did act directly and personally and through his close subordinates and agents" et cetera. The language near the bottom of paragraph 2 is amended to read, "to cover up, conceal, and protect those responsible;"

There is stricken in paragraph 3 the language, "or others" which previously followed the word "following." The means that are set out are illustrative of the policy that is contained in paragraph 2 which is basically the gravamen of this article and it was felt that the use of that language, "or others", was unnecessary and really superfluous.

The first subparagraph listed follows essentially the previous language although limited to the investigative officers and employees of the United States.

Subparagraph 2 of the substitute was subparagraph 6 of the original article. It has been placed here in an effort to group together means which seems to be related to one another and it seemed appropriate that it should be listed here with 1 and 3, rather than further down on the list. This is an effort obviously, amongst other things, to introduce some additional logic into the structure of this article.

Subparagraph 3 is essentially the same as subparagraph 2 of the original proposed article.

In subparagraph 4 the language "or endeavoring to interfere" has been added to the original provision "interfering with the conduct of investigations by the Department of Justice of the United States, the Federal Bureau of Investigation, and the Office of Watergate Special Prosecution Force." Two changes clarifying the official titles of those agencies are also made.

Subparagraph 5 strikes the language, "and concealing the payment of money" and substitutes "condoning, and acquiescing in, the surreptitious payment of substantial sums of money." And then this subparagraph which previously went on to read, "for the purpose of obtaining the silence of participants in the illegal entry into the headquarters of the Democratic National Committee and other illegal activities" has been amended to read "for the purpose of obtaining the silence or influencing the testimony of witnesses, potential witnesses or individuals who participated in such illegal entry and other illegal activities;"

In other words, the scope of that subparagraph encompasses individuals who participated in the influencing of the testimony of witnesses or potential witnesses.

Subparagraph 6 of the substitute is identical with subparagraph 5 of the original article with the addition of the words "an agency of the United States" at the end of the sentence.

Subparagraph 7 of the substitute makes some changes in what was formerly subparagraph 8 of the original article. After the language, "disseminating information received from officers of the Department of Justice of the United States to subjects of investigations" has been added the following new language: "conducted by lawfully" —

The CHAIRMAN. The time of the gentleman has expired.

Mr. DENNIS. Mr. Chairman, I ask unanimous consent the gentleman be given 2 additional minutes.

The CHAIRMAN. The gentleman is recognized for 2 additional minutes if there is no objection.

The gentleman is recognized for 2 additional minutes.

Mr. SARBANES. The new language is "conducted by lawfully authorized investigative officers and employees of the United States." It is meant to clarify the thrust of subparagraph 7. Finally, in a further effort at clarification, the concluding language of subparagraph 7 has been amended to read "for the purpose of aiding and assisting such subjects in their attempts to avoid criminal liability."

Subparagraph 8 of the substitute parallels subparagraph 9 of the original article and the changes are as follows: after "making false or misleading public statements," strike the language "in his capacity as President," so it now reads "making false or misleading public statements for the purpose of deceiving the people of the United States into believing that a thorough and complete investigation had been conducted with respect to allegations of misconduct." The earlier language then said, "at the White House" and this has been changed to say "on the part of personnel of the executive branch of the United States," which I think is a more accurate description of the individuals that would be embraced by this subparagraph.

Subparagraph 9 of the substitute is former subparagraph 7 of the original article. It has been edited to read: "endeavoring to cause prospective defendants, and individuals duly tried and convicted, to expect favored treatment and consideration in return for their silence or false testimony," and then the following language has been added, "or rewarding individuals for their silence or false testimony."

And finally, Mr. Chairman, the wording of the next-to-last paragraph has been revised to place it in better form so that this paragraph now reads "In all of this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice and to the manifest injury of the people of the United States."

Mr. HUTCHINSON. Mr. Chairman?

The CHAIRMAN. I recognize the gentleman from Michigan, Mr. Hutchinson.

Mr. HUTCHINSON. Mr. Chairman, I want to express my opposition to the substitute as offered. I will not take all of 5 minutes, I am sure, but I am very critical of the substitute and its drafting in that it does not set forth with specific detail the exact incidents upon which any criminal indictment would have to lay.

It seems to me as though in writing an article of impeachment in this general language, that you leave the defendant or the respondent

or whatever it is that we call him, grasping around trying to find out specifically what it is that he is charged with, what he has to answer to.

This is just a lot of generalities. You do not set forth any specific incidents. You do not—you do not—and I think that—I think it is fatal, fatal on that account.

I also raise just by way of illustration here another point and I won't go through it all, but your first two paragraphs here, I am referring to paragraphs numbered 1 and 2, you say, "making false and misleading statements to lawfully authorized investigative officers and employees of the United States." It would seem to me as though you ought to at least allege that those were made to them in the course of an investigation. If they were made in an off-duty status or something of that sort, it would seem to me, in that respect to be fatal, or rather, defective.

For all of this, Mr. Chairman, I certainly do not believe that this substitute represents the caliber of legal work that should go into drawing an article of impeachment, and also I oppose it.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback is recognized.

Mr. RAILSBACK. Mr. Chairman, I would like to address some questions to the gentleman from Maryland if I might have his attention.

Mr. SARBANES, I am wondering if it is your intent in drafting this article to try to limit the allegations to matters that include the President himself either in respect to knowledge that he had or participation that he entered into rather than to in any way try to impute criminal responsibility to him for acts of misconduct on the part of his subordinates that he had no knowledge of. In other words, are we talking about—are these various allegations meant to apply to the President himself and either knowledge that he had or involvement that he had in these various acts that you have enumerated?

Mr. SARBANES. If the acts of his subordinates were in furtherance of his policy, and that is the language set forth in paragraph 2 of the article, then those acts would be shown under the headings provided for means. Those acts would have been carried out by those subordinates and agents in furtherance of such policy. The policy, of course, is the one outlined in paragraph 2 of the proposed article.

Mr. RAILSBACK. It would have to be, would it not, a policy that would be a specific policy of his, not on inference but based on some facts or information?

Mr. SARBANES. Well, the President could establish a policy with respect to this coverup which his agents were generally implementing.

Mr. RAILSBACK. But that would have to be a specific—

Mr. SARBANES. Implementation of that policy by the agents could be brought forth in support of the allegations of this article.

Mr. RAILSBACK. But it would have to be a specific policy and nothing that we are inferring from other actions that have taken place; am I correct?

Mr. SARBANES. Well, there would have to be a policy of the President.

Now, you could have a policy that he had established which he wished to have implemented. You could have that policy subsequently implemented by his close subordinates or his agents.

Mr. RAILSBACK. Let me perhaps express to you my concerns and I think the concerns of others. Some of us do not believe in the so-called

Madison concept by which you hold responsible a superior for acts of misconduct committed by subordinates.

This—well, why don't you respond to that, if you can.

MR. SARBANES. Well, as I understand the wording of this language, it would not reach to the limits of the Madison superintendency theory—

MR. RAILSBACK. All right.

MR. SARBANES [continuing]. Because that theory would reach to the point of—could reach to the point, I think at least, of acts of subordinates not only that the President did not have any knowledge of but that were not in implementation of a policy of the President.

MR. RAILSBACK. I think you have answered my question. Let me ask you this: Would you have any objection or do you think it would be desirable in the light of Mr. Hutchinson's comments, and I frankly to a certain extent share his expressed concerns, that it might not be desirable to have in the report that we prepare certain backup information relating specifically to each of the numbered paragraphs in your article I? Is that possible?

MR. SARBANES. I think that is a very constructive suggestion and I would anticipate that the report would do that but I would be opposed to an effort to include that sort of factual material in the article where I do not think it is appropriate.

MR. RAILSBACK. I understand. But it seems to me that it would be a very good idea, and it would be more fair to the President, and more fair to Mr. St. Clair if he could refer to a report that would in some detail go into the supporting evidence that supports each of the individual numbered paragraphs.

MR. SARBANES. It would be my own view that the report would provide information of that sort. Whether in exactly that form, I would think would be left open, but I would anticipate that the report would provide information of that sort, yes.

MR. RAILSBACK. Thank you.

MR. MARAZITI. Mr. Chairman?

MR. RAILSBACK. I will be glad to yield.

THE CHAIRMAN. The time of the gentleman from Illinois has expired.

MR. WIGGINS. Mr. Chairman?

THE CHAIRMAN. I recognize the gentleman from California, Mr. Wiggins, on the amendment.

MR. WIGGINS. I thank the gentleman for yielding.

Now, Mr. Chairman, an article of impeachment is no less a pleading than any other pleading in a similar criminal case, and its function is to give fair notice to the person charged so that he may have an opportunity to defend against that argument. It must not only be legally sufficient, but in the context of a panel as this, we must be satisfied that the evidence justifies an otherwise legally sufficient argument of impeachment. It is with that in mind that I am going to ask the author of the proposed article a series of questions, and I shall yield, of course, for the purpose of your answer.

The thrust of article I is to charge the President with an obstruction of justice, as I understand it. Is it your intent by your article to charge the President with the substantive crime of obstruction of justice?

Mr. SARBANES. In a criminal sense, no it would not be the intention that the content of this article would be specifically defined in criminal terms, in terms of the criminal offense and in terms of what would be required accordingly in a criminal trial.

Mr. WIGGINS. All right. I understand.

Mr. SARBANES. An impeachable offense, I do not believe, is coincidental with a criminal offense. I think that is a view generally accepted by the members of this committee, and this article is drawn on that premise.

Mr. WIGGINS. All right, that being the premise, I think the answer to the next two questions is no. And if you would just answer no rather than explain it, it would preserve my time.

Is it your intent by this article to charge the President with the substantive crime of No. 1 conspiracy to obstruct justice?

Mr. SARBANES. Again, if you are using that term in a criminal sense, the answer would be no.

Mr. WIGGINS. Is it your intention—

Mr. SARBANES. But that does not mean that concepts pertaining to conspiracies would not be pertinent in the application of this article.

Mr. WIGGINS. All right.

Is it your intention by this article to charge the President with the substantive offense denounced in section 1510, that is the interference with properly constituted investigative agencies?

Mr. SARBANES. Well, I take it in each instance when the gentleman—Mr. Chairman, I ask unanimous consent that the gentleman be given an additional minute since I find it difficult to answer the questions—

The CHAIRMAN. Without objection.

Mr. SARBANES [continuing]. Just yes or no.

When the gentleman uses the phrase "substantive offense," of course, impeachable offenses are substantive. Now, if that phrase is meant again as I said earlier, to be coincident with a criminal offense—

Mr. WIGGINS. That is my question.

Mr. SARBANES. As defined in the criminal code, then this is not meant to be coincidental with a criminal offense, although concepts that may pertain in that area may also pertain here.

Mr. WIGGINS. I understand.

And finally, I gather that your answer would be the same with respect to the substantive crime of subordination of a perjury in 1621 of title 1822.

Mr. SARBANES. Of course, if those matters can be shown in a criminal sense, then they are pertinent to proceedings under this article. But, the article is not restricted solely to those matters. In other words—

Mr. WIGGINS. I think you have adequately answered. I am merely trying to develop a theory of the article, and it appears to be your answer that the article is not premised necessarily upon a violation of the criminal law.

Mr. SARBANES. That is correct. It does not preclude such violations, but it is not premised upon, and not limited to them.

Mr. WIGGINS. I understand the answer.

Now, the heart of this matter is that the President made it his policy to obstruct justice and to interfere with investigations. Would you please explain to this member of the committee and to the other members, when, and in what respect, and how did the President declare



that policy? And I wish the gentleman would be rather specific, since it is the heart of the allegation?

Mr. SARBANES. Well, of course the means by which this policy has been done are the ones that are set out subsequent to the second paragraph.

Mr. WIGGINS. If the gentleman could confine himself to the question first, when was the policy declared?

Mr. SARBANES. In one through nine.

Well, the policy relates back to June 17, 1972, and prior thereto, agents of the committee committed illegal entry, and it then goes on and says subsequent thereto, Richard M. Nixon, using the powers of his high office, made it his policy, and in furtherance of such policy did act directly—

Mr. WIGGINS. I can read the article, but I think it is rather important to all of us that we know from you, as the author of that article, exactly when this policy was declared, and I hope you will tell us.

Mr. SARBANES. Well, I think there are varying factual matters from which a member can draw conclusions in his own mind.

Mr. WIGGINS. What about yourself as the author of the article?

Mr. SARBANES. As to when that policy was established, there are different stages in this matter. There is evidence with respect to the policy having been established immediately after the break-in, or virtually immediately after the break-in. There is other evidence that pertains more specifically to the period of March and April 1973. The wording of this article would encompass that full-time period, and I think the language is broad enough to carry with it the—

Mr. WIGGINS. But your intent is not broad. I would like your intent to be specific, at least in your answer to me. We are talking about a policy of the President of the United States, which is the heart of your allegation, and the answer should not be confused. It ought to be specific.

When was the policy declared, and if I get an answer to that, I would like to know in what manner it was declared. Now, that is not asking too much.

Mr. SARBANES. Well, I want to distinguish two things. One is the scope of the article, which I think encompasses the entire period or any part of it, if a policy was established at any point through that period. I think a strong argument can be made that—

Mr. DONOHUE [presiding]. The time of the gentleman from California has expired.

Mr. WIGGINS. My question has been unanswered thus far.

Mr. DANIELSON. Mr. Chairman?

Mr. SANDMAN. Parliamentary inquiry.

Mr. DONOHUE. The gentleman from New Jersey will state his parliamentary inquiry.

Mr. SANDMAN. Mr. Chairman, would it be in order to make a point of order against any kind of an article of impeachment which is indefinite, uncertain? Would it be in order to make such a motion at this particular time?

Mr. DONOHUE. I would have to say, no; it would not be in order.

Mr. SANDMAN. Then the only thing that I can do then is to object

against, object to the substitute, if I want to be heard at all. Is that correct?

Mr. DONOHUE. After the article is completely debated.

Mr. DANIELSON. Mr. Chairman?

Mr. MARAZITI. Mr. Chairman?

Mr. DONOHUE. Of course, you could be heard on it.

Mr. SANDMAN. May I be heard?

Mr. DONOHUE. You may be.

Mr. SANDMAN. Mr. Chairman, I oppose the substitute as I do the original article for the same reasons set forth by the ranking members and also the gentleman from California. And it is unfortunate that we have not been able to have a ruling on this particular objection prior to today, because if we did I think we could save a lot of time.

And I would like to direct a couple of questions to the gentleman from Maryland, if I can have his attention, please.

Mr. SARBANES. Surely.

Mr. SANDMAN. It is your understanding of the law that the articles of impeachment must be specific, and in order to meet the due process clause of the Constitution?

Mr. SARBANES. I believe that this article that is presented to you meets the law of impeachment with respect to the problem that you raise.

Mr. SANDMAN. I did not ask that. I asked do you understand the law to say that an article of impeachment must be specific?

Mr. SARBANES. In the same sense that a criminal indictment must be specific? I do not believe that the standards which govern the specificity of a criminal indictment are applicable to an article of impeachment, if that is the thrust of the gentleman's question.

Mr. SANDMAN. Well, now, do you not believe that under the due process clause of the Constitution that every individual, including the President, is entitled to due notice of what he is charged for? Do you believe that?

Mr. SARBANES. I think this article does provide due notice.

Mr. SANDMAN. You are not answering my question.

Mr. SARBANES. Well, I think I am answering your question.

Mr. SANDMAN. Well, let me ask you this, then. As I see this, you have about 20 different charges here, all on one piece of paper, and not one of them specific. The gentleman from California has asked you for a date, for example, on charge 1 and 2, no date. You say that he withheld relevant material. When and how?

Is he not entitled to know that? How does he answer such a charge? This is not due process. Due process—

Mr. SARBANES. I would point out to the gentleman from New Jersey that the President's counsel entered this committee room at the very moment that members of this committee entered the room and began to receive the presentation of information, and that he stayed in this room—

Mr. SANDMAN. I do not yield any further.

Mr. SARBANES [continuing]. Throughout that process.

Mr. SANDMAN. I do not yield any further for those kinds of speeches. I want answers, and this is what I am entitled to. This is a charge against the President of the United States, why he should be tried to

be thrown out of office, and that is what it is for. For him to be duly noticed of what you are charging him, in my judgment, he is entitled to know specifically what he did wrong, and how does he gather that from what you say here?

MR. SARBANES. My response to the gentleman is that the article sets out the means. The President's counsel has been here throughout the proceedings and is aware of the material that was presented to us, and that this article, in comparison—

MR. SANDMAN. One last question. One last question, and you can answer.

Do you or do you not believe, and you can say yes or no, that the President is entitled to know in the articles of impeachment specifically, on what day he did that thing for which you say he should be removed from office? Is he entitled to know that, and in an article of impeachment, not by virtue of the fact that his counsel was here?

MR. DANIELSON. Mr. Chairman?

MR. SEIBERLING. Mr. Chairman?

MR. SARBANES. I do not believe that the article of impeachment is going to contain all the specific facts which go to support the article. If it were to do that, the article of impeachment would be 18 volumes, or whatever the number of volumes are pertinent to place into it all of the specific information.

MR. SANDMAN. I do not think it has to say that at all. But, I think it has to say that on a certain day he did something which is illegal, thus-and-so. You can say that in a simple sentence, but you are not saying that here. And, in fact, there is plenty of law on this point, and it says that these things shall not be general, these things shall not be general. They shall be specific. This has been the case of every impeachment trial tried in the United States, all the way up to the last one in 1936. You do not dispute that, do you?

MR. SARBANES. I do dispute that. If the gentleman is talking or referring back to criminal indictments, then the thrust of the gentleman's point has some merit, but I do dispute it when he shifts it to the law of impeachment. It is not a correct statement of the law of impeachment.

MR. SANDMAN. I am talking about the impeachment of Justice Ritter. That was an impeachment.

MR. DONOHUE. The time of the gentleman from New Jersey has expired.

MR. DENNIS. Mr. Chairman?

MR. DONOHUE. The Chairman recognizes the gentleman from California, Mr. Danielson.

MR. DANIELSON. Thank you, Mr. Chairman.

Apropos of the debate as to specificity as to time, I should like to point out that although this is not a criminal prosecution there is ample precedent in our Federal criminal procedural laws to establish that the only point, the only necessity for establishing a date in an indictment, which this is analogous to, is to bring the activity complained of within the period of the statute of limitations. Here since the pleadings would indicate that on June 17, 1972 and prior thereto, but obviously in its context, within the period of time that Richard Nixon has served as the President of the United States, and, there-

fore, clearly within the period of limitations for this proceeding, these events did take place, and the policies were established.

The only other requirement in an accusatory pleading, which a bill of impeachment will be, as for specificity on facts, is that the facts be described with sufficient particularity so that the person charged or accused can be aware of the offenses with which he is charged, and thereby enabled to prepare his defense.

Second, that acquittal or conviction on that charge of factual information will serve as a bar to any subsequent prosecution.

Now, I respectfully submit that the pleading before us or proposed pleading as submitted by Mr. Sarbanes does clearly establish as to time that this policy was established, on June 17, 1972, and prior thereto, but within the term of office of President Richard M. Nixon, and therefore, as to time, this is sufficiently specific.

No. 2, as to the facts, I would respectfully submit that they are alleged with great particularity, and sufficiently enable the President to prepare his defense, and to have an acquittal or a conviction serve as a bar to a subsequent prosecution, thereby avoiding the constitutional ban against double jeopardy.

Last, I would like to point out that this document, a bill of particulars, is not an indictment, and criminal law, the precedents do not control. They are valuable as an analogy, but this need not be as specific as an indictment in a criminal case.

Moreover, the added information which counsel for the President may want in the nature of time, and in the nature of dates, places, particulars on facts, can be reached by him in the event this goes to trial in the Senate through his bringing a motion for a bill of particulars, or a motion to make more definite and certain, and it is not an attack upon the validity of this proposed article of impeachment.

Mr. DENNIS. Mr. Chairman?

Mr. SANDMAN. Would the gentleman yield?

Mr. DANIELSON. I will be delighted to yield.

Mr. SANDMAN. Now, you have made a point that this is not necessarily the same as a criminal indictment.

Mr. DANIELSON. That is correct.

Mr. SANDMAN. All right now, even if we were to agree on that point, which I do not altogether, but let us assume we do, does the President have any rights pertaining to due process?

Mr. DANIELSON. No, he does not.

Mr. SANDMAN. As would a common criminal in an indictment?

Mr. DANIELSON. He does not have any less right, and as a matter of fact, in this proceeding he has enjoyed much greater rights.

Mr. SANDMAN. All right, so he is entitled to due process?

Mr. DANIELSON. This is my time, Mr. Sandman. I will point out that the President has been present and participated in these proceedings since the very first hour that we have met.

Mr. SANDMAN. Will the gentleman yield?

Mr. DANIELSON. His counsel has been permitted to introduce evidence and to examine witnesses. He has a complete copy of every document that pends before this committee. Due process has not merely been observed here, it has been exalted, and I applaud it, but the President and no one else has ever had opportunity to be informed such as have been provided to him in this procedure.

Mr. SANDMAN. Will the gentleman admit that this begins a new chapter, this begins a new charge?

Mr. DANIELSON. I was about, I would say to the gentleman from New Jersey, I was about to yield to my colleague from California, Mr. Edwards.

Mr. EDWARDS. Thank you. I would like to direct a question to Mr. Danielson.

Mr. DANIELSON. I will yield for the question.

Mr. EDWARDS. Thank you. The purpose, of course, is to always be fair in an indictment, and that is why it should be as exact as possible. Do you think that the President and his attorney can understand in great particularity exactly the charges, the specific events that this bill of impeachment refers to?

Mr. DANIELSON. Well, at the risk of sounding frivolous, I would state anyone who is in charge of the complicated business of this Nation certainly would be able to understand the intendments of this proposed article of impeachment. But, if under some happenstance this is not deemed clear to the person accused, he still will have the remedy of asking for a bill of particulars or make a motion for greater detail and specificity of these facts at an appropriate time. Yes, due process is well served, and fairness has been preserved in these proceedings.

Mr. HUNGATE. Would the gentleman yield?

Mr. DONOHUE. The time of the gentleman from California has expired.

The Chair will now declare a recess until 3 o'clock.

[Whereupon, at 1:28 p.m., the committee was recessed, to reconvene at 3 p.m. this same day.]

#### AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. The gentleman from Texas, Mr. Brooks.

Mr. BROOKS. Mr. Chairman, I want to thank you for recognizing me and yield my 5 minutes to the gentleman from Maryland, Mr. Sarbanes.

The CHAIRMAN. The gentleman from Maryland.

Mr. SARBANES. I thank the gentleman for yielding.

Mr. Chairman, there are two points I want to clarify stemming out of the discussion that was held this morning. The first deals with the procedural aspects of this matter with respect to the detailing of the factual material that underlies the article of impeachment. And there I want to make three things very clear.

First, the President's counsel has been here throughout the proceedings. All of the factual material that the committee has considered, all of the statements of information, all of the summaries were provided to him on a daily basis just as they were provided to us. So the contours and the details and the pattern and the interrelationship of the factual matters have been spelled out fully to the President's counsel. Nothing has been concealed from him.

Second, this committee once it makes its decision, will have to make a recommendation to the floor of the House of Representatives and at that point what we bring forth will be supported by a report which

will have to detail the underpinning for the action that we have taken. So the material will again be spelled out there for the benefit of our colleagues in the House before they make their decision. Neither at this point, nor in the House, is the President yet on trial. He is only on trial when the matter reaches the Senate.

And third, when the matter does reach the Senate the President's counsel is in a position to seek further specification if he deems it is necessary, although it is my conviction that his participation here and the further report that will have to be prepared for the Members of the House of Representatives will fully provide him with all of the material necessary to prepare a defense for the trial which will take place in the other body.

Now, that is the procedural side of this thing.

Let me turn for a moment to some of the substantive things.

Time, of course, is not going to permit me to sketch out all of the matters which underlie the allegations in this article. But I do want to set some of them out so there is some appreciation of the detail that lies behind the charge that is being made against the President of the United States and contained in this article I for the purposes of impeachment.

Let us look at the pattern of conduct that began subsequent to the break-in on June 17. The President professed ignorance of both the involvement of the Committee to Re-Elect the President and White House involvement in Watergate in the face of discussions of Watergate on or before June 20, with Haldeman, Colson, and Mitchell, persons aware of such involvement and the President's closest advisors. On the morning of June 20, Haldeman, Mitchell, Ehrlichman, Kleindienst and Dean met in the White House in the early morning. Later that morning Haldeman met with the President. The Chief of Staff met with the President. And his notes indicate that in that conversation with the President Watergate was discussed. The part of the tape pertaining to the Watergate discussion is the 18½ minutes that are missing and which an expert panel reported to Judge Sirica were manually erased.

The President has refused to honor subpoenas of this committee seeking conversations with Haldeman and Colson on June 20. On the 22d of June the President made a statement that Mitchell and Ziegler had stated the facts accurately when they said there was no basis for believing involvement.

On the 23d of June the President had a meeting with Haldeman, his chief of staff, subsequent to which Haldeman and Ehrlichman met with Helms and Walters and in effect, directed them to indicate to the FBI that the pursuance of the investigation into Mexico should be halted because it might encounter CIA activities.

The day before, on the 22d of June, Helms had told Gray, the FBI Director, that there was no CIA involvement and at the June 23 meeting, at that meeting initially Helms and Walters reported to Haldeman and Ehrlichman that there was no such involvement.

On the 30th—on the 20th of June, Mitchell apologized to the President because some of his people had gotten out of hand. He regretted that he had not policed the people in his organization. We heard that tape.

On the 30th of June there was a conversation with Mitchell in which the President indicated that they must cut the loss from potential disclosures about CRP involvement in Watergate by having Mitchell resign as campaign director.

On the 6th of July, in a conversation with the President, the Director of the FBI, Patrick Gray, told the President the members of his staff were trying to mortally wound him. The President paused for a long time and then said to Pat Gray, you just keep on with your aggressive and thorough investigation. He did not ask Pat Gray then or later what he meant by that, who was involved, who was trying to do it, how they were trying to do it.

On August 29th the President issued a statement concerning the Dean report. He went before the American people and said he had asked John Dean to investigate the matter.

The CHAIRMAN. The time of the gentleman has expired.

Mr. MARAZITI. Mr. Chairman, Mr. Chairman—

The CHAIRMAN. Mr. Maraziti, for 5 minutes.

Mr. MARAZITI. Thank you, Mr. Chairman.

I was amazed to find—to hear the gentleman from Maryland explain why it is not necessary to detail the facts and one argument given is that the counsel for the President was present in the room when these matters were being discussed.

That is not a satisfactory disposition of the matter. It reminds me of counsel for a defendant appearing in a magistrate's court, a presentation made of an hour or two, then the prosecutor of the county—a very general indictment—it is not sufficient for the prosecutor of the county to say I do not have to specify because the counsel for the defendant attended the preliminary examination.

And the President—the knowledge of the counsel is not the knowledge of the President. We do not know whether the counsel for the President that appeared here is going to be associate counsel or one of a number of counsel or whether there will be different counsel.

Now, he makes a point of once the resolution or the articles get to the floor they can be justified, amended, and so on. That may be so. But I think it is necessary, Mr. Chairman, members of this committee, for us to, the members here and now, before we vote for or against a particular article, to know the time and place and names, to know all the events.

Now, I have done some legal research during the noon recess because it was represented that the law that pertains to indictments does not necessarily apply to impeachment proceedings. And I found that from the very beginning, when impeachment proceedings were instituted in 1798, right down to the present time, the last impeachment, of Judge Ritter in 1936, that every respondent charged has been faced with articles of impeachment that alleged specifics, and there is a reason for it. There is a reason for it. So that he who is charged, and this is fundamental to Anglo-Saxon law, that he who is charged must know on what particular charge or points he must defend himself. It is not necessary for him to go over the tremendous amounts of information that we have here and say, well, maybe they will accuse me on this and maybe on that. And it is very simple, Mr. Chairman, because the gentleman from Maryland began to specify certain times, places and events.

Now, if that is it, if that is what the charge is, simply include it in the articles of impeachment.

Just to take an example, on the point one of the—paragraph 1 of the article, making false or misleading statements. All right. What statements? When were they made? And where were they made? That is simple because if we are going to know about it when it goes to the House of Representatives, we ought to know about it now.

To lawfully authorized investigative officers. What officers? One, two, three. When? And where? What is so difficult about that?

No. 5, approving, condoning and acquiescing in payment of substantial sums of money. All right. How much money are we talking about?

Mr. DANIELSON. Will the gentleman yield?

Mr. MARAZITI. The amount. The purpose. I will yield as soon as I am through.

The purpose for which the money was given. To whom was it given? How many persons are involved?

No. 6, endeavoring to misuse the Central Intelligence Agency. That is a very broad general statement and it may be true. I am not denying it. I am not affirming it either. Endeavoring to misuse the CIA. We ought to know how, when, where did this occur.

Disseminating information received from officers. What officers of the Department of Justice? And that can be characterized throughout the entire part of this article.

No. 8, making false—

The CHAIRMAN. The time of the gentleman has expired.

Mr. MARAZITI. Thank you.

Mr. DANIELSON. Mr. Chairman?

Mr. LATTA. Mr. Chairman?

The CHAIRMAN. I recognize the gentleman from Massachusetts, Mr. Donohue.

Mr. DONOHUE. Thank you very much, Mr. Chairman.

I desire to yield my 5 minutes to the gentleman from Maryland, Mr. Sarbanes.

The CHAIRMAN. The gentleman from Maryland is recognized.

Mr. SARBANES. I thank the gentleman for yielding his time, Mr. Chairman, and it does give me an opportunity to try and summarize of this initial outline of facts. I think it is important that the facts be understood, that a perception of the underpinning that rests behind this article be generally appreciated.

Let me go back for a moment. I was up to August 29.

On July 8 the President and John Ehrlichman walked on the beach in California and the subject of clemency for those involved in Watergate was brought up and Ehrlichman reports that the President rejected it and said they were not going to consider that. But the essential question is why was it brought up at all with respect to men who had not yet been indicted, fully 6 months in advance of trial, people it was contended at that point who had absolutely no connection with the Committee to Re-Elect or with the White House.

On August 29, as I was saying earlier, the President made a public statement that John Dean had carried out a comprehensive investigation and reported that no one in the White House was involved. There was no such investigation.



If the gentleman will allow me to continue, I want to try and get out some of these facts.

Mr. SANDMAN. Is this a new statement or is this a rehash of what we had? Maybe this is a new statement. Is it?

Mr. SARBANES. Subsequent to August 29, on September 15, the President met with H. R. Haldeman, his Chief of Staff, and with John Dean. Haldeman at that time said to the President before Dean came into the room that Dean had done a good job and had kept people from falling through the holes.

Now, that was a piece of tape we picked up accidentally when the staff went down to record at the White House and it proved to be highly relevant, even though it had earlier been asserted that it was not pertinent to our inquiry.

Then John Dean came into the room and our transcript, the committee transcript, taken from the tape of that conversation, has the conversation opening with the President saying "Hi, how are you"? Now, this was the day that the indictments were returned in the Watergate matter. They were limited to seven people and it was assumed that it had been cut off at Hunt and Liddy and would not go higher. So the President says to Dean, "Hi, how are you"? Dean says, "Yes, sir."

The President, "Well, you had quite a day today, didn't you? You got, uh, Watergate, uh, on the way, huh"? And Dean says, "Quite a 3 months."

That "quite a 3 months," by Dean is missing, ladies and gentlemen, from the edited transcripts of the conversation of September 15 which were submitted to this committee by the White House and which were made public to the American people.

Subsequently, in that conversation the President went on and said that a lot of stuff went on, that Dean had handled it skillfully, putting his fingers in the dike when leaks had sprung here and sprung there, and that "You just try to button it up as well as you can and hope for the best and remember that basically the damn thing is just one of those unfortunate things and we're trying to cut our losses."

Now, they succeeded in covering up through the November election and then early in the next year things began to come apart. They started slowly and accelerated. And we have in January a discussion, the President and Colson, about clemency for Hunt. Again, Colson says that there were no assurances made but the discussion was held. The subject was brought up. Why were they bringing up this subject to people for whom they denied any connection at an earlier time?

And then in late February the President begins to have some conversations with Dean and those continue in late February and into March and, of course, beginning with March 21 and coming forward things begin to snowball.

Let me go to the March 21 conversation. It is imperative that you take the transcripts and read through them and that you read through them not only in terms of what is being said then as to what is happening but refer back to what happened earlier. There are discussions of how it developed, what the pattern was, what the problems were that came forth, and in that conversation on the morning of March 21, 1973, in which the President, John Dean, and H. R. Haldeman, the

President's Chief of Staff, were all three present, the President said to John Dean: "All right. Fine. And, uh, my point is, that, uh, we can, uh, you may welcome—I think it is good, frankly, to consider these various options. And then, once you"——

The CHAIRMAN. The gentleman's time has expired.

Mr. SARBANES [reading]: "Once you decide on the plan—John—and you had the right plan, let me say, I have no doubt about the right plan before the election."

Mr. LOTT. Mr. Chairman?

The CHAIRMAN. The time of the gentleman has expired.

Mr. SMITH. Mr. Chairman?

The CHAIRMAN. Mr. Smith.

Mr. SMITH. Mr. Chairman, I would like to yield my time to the gentleman from New Jersey, Mr. Sandman.

The CHAIRMAN. Mr. Sandman is recognized for 5 minutes.

Mr. SANDMAN. I would like to start with one simple question. It certainly deserves a simple answer. I have just heard a rehash of all of the excerpts from all of the tapes. My question to the gentleman from Maryland, who just presented those, is this a new document that you submitted? Or what was your purpose?

Mr. SARBANES. No. I am recounting back over the transcripts of the tapes, pertinent portions of that conversation.

Mr. SANDMAN. Well, if it is not a new document then we are back to where we started. Why are you resisting the fact that this should be in the articles of impeachment? Is not the Congress entitled to know what they are going to vote on when it gets to them? Should they not know when it happened and how it happened? Should this not be in the articles?

Mr. SEIBERLING. Would the gentleman yield?

Mr. SANDMAN. A brief answer from the gentleman from Maryland, if he has one.

Mr. SARBANES. I responded to that question this morning when the gentleman asked it and——

Mr. SANDMAN. You have not given any answer at all.

Mr. SARBANES. And I said at that time if we were to bring into the articles all the factual material which underpins them we would have to have articles that run into volumes and volumes.

Mr. SANDMAN. Now, that is not so.

Mr. SARBANES. It is so.

Mr. SANDMAN. And you know it is not so.

Mr. RAILSBACK. Will you yield?

Mr. SANDMAN. In a moment I will yield, you know that is not so any more than it is an indictment. You do not need the whole brief in an indictment and I do not want to be confused again by saying this is an indictment. It is not. But the common criminal in a criminal case has no more rights than the President of the United States in an impeachment case. This is what I have said.

Mr. RAILSBACK. Would you yield?

Mr. SANDMAN. No, I won't yield. I am not finished.

Now, the important thing here is why isn't the President entitled to this kind of simple explanation? It can be in a single sentence. We don't have to go through the speech that you made. All you have to

say on any one of your articles, a very simple sentence, on such and such a date the President did contrary to the law a simple act. That is all you have to say. Why won't you say it?

Mr. DANIELSON. Will the gentleman yield?

Mr. SANDMAN. I want him to answer.

Mr. SARBANES. Will the gentleman yield?

Mr. SANDMAN. Sure, a simple answer.

Mr. SARBANES. Behind each of those allegations lies an extensive pattern of conduct. That will be spelled out factually and will be—

Mr. SANDMAN. That is—

Mr. SARBANES. If the gentleman will let me finish, I am endeavoring as best I can to respond to his question.

Mr. SANDMAN. All right. Go ahead.

Mr. SARBANES. And that pattern of conduct will be spelled out in the report that accompanies the articles. But there is not one isolated incident that rests behind each of these allegations. There is a course of conduct extending over a period of time involving a great number of incidents.

Mr. SANDMAN. I am not going to yield any further. It is my time you are using up. I am not going to yield any further for that kind of an answer. You are entitled to your proof. No one said that you aren't. You are entitled to as many articles as you can get the Democrats and some Republicans to agree upon. And no one says that you are not entitled to that. But to each of these, my friend, the law from the beginning of this country up to the last impeachment in 1936 says, whether you like it or not, it has to be specific and this is not specific.

Mr. LOTT. Mr. Chairman?

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. The Chair would like to address a question to counsel and staff which has had the whole matter before it for a period of time, citing the precedents and the history of impeachment, as to whether or not there is a requirement that there be specificity in the preparation of articles for impeachment? I address that to our counsel.

Mr. DOAR. Mr. Chairman, in my judgment it is not necessary to be totally specific, and I think this article of impeachment meets the test of specificity. As the Congressman from Maryland said, there will be a report submitted to the Congress with respect to this article, if the committee chooses to vote this article, and behind that report will be the summary of information, as well as all of the material that was presented to this committee.

Prior to trial in the Senate, the counsel for the President is entitled to make demands for specificity through perhaps a motion similar to a bill of particulars, and so that all of those details may be spelled out.

But, from the standpoint of this article, my judgment is firmly and with conviction that this meets the tests that have been established under the procedures.

Mr. COHEN. Mr. Chairman?

Mr. McCLORY. Would the Chairman yield? Would the Chairman yield so that we might get an opinion from Mr. Garrison?

The CHAIRMAN. I address the same question to Mr. Garrison.

Mr. GARRISON. Mr. Chairman, I have not frankly spent a great deal of time researching this question. But, I would say that while it may

very well not be a requirement of the law, it clearly can be said to be the uniform practice of the past to have a considerable degree of specificity in the articles, and I would cite the members of the committee to a publication of this committee of October 1973 entitled *Impeachment, Selected Materials*, and beginning on page 125 and concluding on page 202. Every article of impeachment which has been tried in the Senate is set forth, and I would be less than frank, Mr. Chairman, if I did not suggest that a simple reading of those articles would suggest an enormous amount of factual detail. As a matter of fact, to an extent that is actually not included in indictments. And they are not only times, dates, and places named, sometimes there are the sums of money that allegedly have been misappropriated. I would refer you, for example, to page 173 to the fifth article against Judge English, in which the judge was accused of inebriety, and I am sure, much to his embarrassment, the article goes on at great length describing exactly when and where he was drunk.

The CHAIRMAN. I would like to address the same question to Mr. Jenner.

Mr. SANDMAN. Now, what is his capacity, Mr. Chairman?

The CHAIRMAN. The gentleman is associate counsel of this committee, associate to the staff as counsel, and for a while, and for a great while, served, by selection of the minority, as the minority counsel.

Mr. Jenner.

Mr. JENNER. Thank you, Mr. Chairman, and ladies and gentlemen.

An article of impeachment as of the present day is to be viewed in the light of the progress made in the field of criminal procedure by this Congress and by the progress made under the Enabling Act by the Advisory Committees of the U.S. Supreme Court adopting the Federal rules of criminal procedure.

And second arising out of the electrical cases, the multidistrict panel plan by which all complicated cases are reviewed, whether they are multidistrict or otherwise, and as a result of that progress that has been made with respect to the Federal rules of criminal procedure, and the new Federal rules of criminal procedure which have now been approved by the House of Representatives, and I believe this committee, it is no longer necessary to specify either in civil or criminal complaints a range of specificity that accompanied the needs of a past era. And all that is necessary under the cases is that the bill, the complaint, and I respectfully suggest the articles of impeachment give but what is called notice, or notice pleading, and that is in itself sufficient.

Under the Federal rules of criminal procedure, under the discovery provisions, the President may obtain all of the 38 books, all of the summaries, all of the materials that are before this committee. As is specifically stated in rule 16, that is the rules now in effect, not even counting the new criminal rules that have been approved that are not yet in effect. So that in considering present day articles of impeachment, you must have in mind the progress that has been made in those respects in the last decade.

The CHAIRMAN. Thank you very much.

Mr. LATTI. Mr. Chairman?

Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. I recognize Mr. Edwards.

Mr. EDWARDS. Thank you, Mr. Chairman. I think it is important to continue to present proof of the charges in the bill of impeachment. I am sure that there are going to be many byroads, and many other issues that will be brought up, but I think it is vital that in these proceedings that the evidence be spelled out so that we all can understand it better.

In support of the first portion of the bill of impeachment, Mr. Sarbanes presented some very clear evidence of the President's knowledge almost immediately after the June 17, 1972, burglary at the Watergate. I think that anybody here can understand the reluctance of the White House and the President to have the public find out about this, and find out of the connection with his Committee To Re-Elect of Mr. Hunt and the other people who were arrested for the burglary.

Well, one of the choices would have been just to let them go to jail, and call it a bizarre incident. I think it is fairly clear that this was the choice, and every effort was made to have it appear to be just a bizarre incident. Yes, perhaps there could have been some connection with the White House with Mr. Hunt and so forth.

Or another choice would have been just to admit Mr. Hunt worked at the White House, yes, had an office there, was in the White House phone book, and then down the road let Liddy, chief counsel, I believe, for the Committee To Re-Elect, surface. He was bound to surface. Well, why not take that choice? That could be ridden out perhaps by the White House, even as Watergate itself was ridden out. But, why do you imagine the President had to or felt he had to encourage such a massive coverup after June 17, shortly after the burglary? Why not let it hang out?

This was discussed quite a lot. We all remember that in the transcripts. Why not direct the FBI to go ahead and do a darn good job, and really complete the investigation as they started out trying to do? Why involve the CIA in this unfortunate behavior? Why encourage, almost demand, that the CIA go to the FBI and say, stop, don't continue your investigation, stop where you are. By all means, don't get into that money that was found on one of the burglars.

Well, incidentally, the efforts by Mr. Dean and the efforts to direct the CIA to influence the FBI not to continue the investigation were successful. They were successful until June 5 when Pat Gray finally said no, I am not going to do it any more and went to the CIA. The CIA said of course we don't have anything to do with anything in Mexico where your investigation might disclose some unfortunate things that are going on down there, or something clandestine by the CIA.

Well, here is the key to it. Immediately the next day actually the White House knew that Hunt was involved. His name was in the phone book. He had an office in the Executive Office Building. And Liddy had to be exposed somewhere down the line. The money on the burglars could immediately be traced to Liddy, the Mexican banks, and then back to the Committee To Re-Elect the President.

Sloan had given the money to Liddy to launder. That was all sure to come out. But, what would the exposure of Hunt and Liddy reveal in addition to their participation in the Watergate burglary and their

connection with the Committee To Re-Elect the President and the White House?

Hunt, just about the original plumber, came aboard the White House in July 1971. Suppose—and this probably would have happened if it had all come out right there with a hard-hitting FBI investigation—that after Mr. Hunt went to work as a plumber at the White House in late 1971 he composed the fake Diem cables, attempting to link former President Kennedy with the Diem assassination. He tried very hard to sell those cables, not to sell them but to get Life magazine to write them up as real. It is very much to the credit of the magazine that they did not do it.

On July 22, just a few weeks after Mr. Hunt became a plumber at the White House, he went to the CIA, and obtained a red wig, a voice changer, and fake identification papers and so forth. He put on this disguise shortly after that and went to Massachusetts to interview a Clifton DeMott in hopes of digging up some dirt on Senator Edward Kennedy.

What else was Mr. Hunt doing during this period shortly before Watergate that would have been exposed? He had taken the famous trip to Denver, Colo., in the same red wig, with the voice changer to interview Dita Beard, who was in a hospital bed there, in connection with the ITT case. We all remember the famous Dita Beard-ITT memorandum.

And then for all we know, another project of the plumbers that John Dean testified to but did not come off, might have been exposed: The planned bombing, allegedly ordered by Charles Colson, of the Brookings Institution so that in the confusion people could rush in and take out a report that was being written.

But, more importantly, what would have been exposed, the burglary, the burglary in Los Angeles in September 2, 1972, of Dr. Fielding's office in Los Angeles. Who was involved in that burglary that was also involved, participated, and was arrested at the Democratic National Committee? Mr. Barker, Mr. Martinez, Mr. DeDiego—

The CHAIRMAN. The time of the gentleman has expired.

Mr. BUTLER. Mr. Chairman?

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman.

The CHAIRMAN. I recognize you for 5 minutes, Mr. Butler.

Mr. BUTLER. I share the concern raised by the gentleman from New Jersey, Mr. Sandman, and I would like, if I may, to return to our question of Mr. Jenner, if you could answer a few more questions for me. We all really have so much information that it is not sufficient to say to the counsel for the President that he is entitled to all of those 38 books, because we really have so much that we do not have any. I am concerned that the President is entitled to know what facts are going to be educed against him. So my question is this: Based on your view of the precedents, and your experience, is the President entitled to know at some point prior to trial just exactly what facts will be educed against him?

Mr. JENNER. I think in an impeachment proceeding that he is so entitled.

Mr. BUTLER. Now, how would counsel for the President go about getting that information if it were not spelled out specifically in the articles of impeachment?

Mr. JENNER. In the proceedings in the Senate that take place after the articles of impeachment are filed with the Senate, and prior to the commencement of the trial, and subject to pre-trial and trial impeachment proceedings rules adopted by the Senate, he will be entitled to ask for and receive or to examine, under the supervision of the Chief Justice, who will conduct the pre-trial proceedings as well as preside at the trial, all pertinent evidentiary materials in the possession of this committee not already supplied to or in the possession of the respondent bearing upon the issues presented by the articles of impeachment. Under modern practice, especially in civil cases but substantially so also in criminal cases under the criminal rules (subject to the fifth amendment), and the Multidistrict Panel Manual, counsel are required to make relevant evidentiary materials that bear upon the issues of a case available to opposing counsel but to the extent only that opposing counsel don't already have the evidentiary materials. Also the party seeking the evidentiary materials must establish a need; the matter, in other words, is not automatic.<sup>1</sup>

Mr. DENNIS. Would the gentleman from Virginia yield for one question to counsel for clarification?

Mr. BUTLER. In just one moment. Let me ask him one more question. Is the President also entitled to know sufficiently in advance of the trial the facts that may be educed in order to prepare a defense so it cannot come to him at the last moment?

Mr. JENNER. He is entitled to that, Congressman Butler. But, he is not entitled to it by way of factual allegations in the articles of impeachment. The articles, just as in the case of an indictment or a complaint in a civil case, afford a respondent in an impeachment proceeding fair notice of the charges against him. However, as to the facts, that is the evidence, he is entitled, pursuant to appropriate request in the pretrial stage under present modern practice, to be afforded evidentiary materials to the extent he does not already have them. This is all worked out prior to trial.

Mr. BUTLER. Whether he gets them sufficiently in advance is depending on whether he asks the question soon enough?

Mr. JENNER. Yes; and that will depend upon the President's counsel, of course. Mr. St. Clair has participated in all the weeks of executive sessions of this committee and has received all of the materials presented by the staff to this committee. Mr. St. Clair is one of the most able lawyers in America. He is experienced in both the civil and criminal fields. We anticipate that, without peradventure, Mr. St. Clair will move promptly in the Senate for such evidentiary materials he does not already have and will do so in apt time. He cannot wait until just before trial.

Mr. BUTLER. All right. Now I yield to the gentleman from Indiana.

<sup>1</sup> On Aug. 6, 1974, in a letter to Chairman Rodino, Mr. Jenner clarified his statements concerning the function of a Bill of Particulars in an impeachment proceeding. The text of Mr. Jenner's letter is printed at pages 561, 562 of this volume.

Mr. DENNIS. I thank the gentleman for yielding. And I would like to ask Mr. Jenner if rule 7 of the Federal Rules of Criminal Procedure does not provide that the indictment of the information shall be a plain, concise, and definite written statement of essential facts, facts constituting the offense charged?

Mr. JENNER. That rule so reads, sir, as does the corresponding Federal Civil Rule. Both are notice pleading rules.

Mr. DENNIS. I thank you. I yield back to the gentleman from Virginia.

Mr. BUTLER. If I have any time remaining, Mr. Chairman, I yield to the gentleman from Maryland.

The CHAIRMAN. The gentleman from Maryland is recognized.

Mr. HOGAN. If I could, if I could further ask counsel, either Mr. Doar, Mr. Jenner, or Mr. Garrison, would it be possible for Mr. St. Clair to not request any additional information or specificity, and wait until the time of trial in the Senate, and then move to dismiss the impeachment on the grounds that it is not specific?

Mr. JENNER. He may do that, Mr. Hogan, but only at the gravest and greatest possible risk of the Chief Justice ruling that a motion directed against the sufficiency of the allegations of an article of impeachment comes too late. Furthermore, in the pre-trial proceedings conducted under the supervision of the Chief Justice, that issue, as well as the matter of evidentiary materials, will have been raised by counsel or the Chief Justice himself and disposed of. This is particularly true respecting any motions for production of evidentiary materials.

Mr. HOGAN. Except as a practical matter, he has all of the material already.

Mr. JENNER. That is correct, sir. And the Chief Justice, as the presiding judge who will rule on motions for production of evidentiary materials, will necessarily have very much in mind that the respondent has the material already, particularly so in this instance. Granting of a motion for production of evidentiary materials is not automatic. The mover of the motion must show need.

Mr. HOGAN. But the real thrust of my question is would he prevail in offering that motion for, in effect, a directed verdict?

Mr. JENNER. In my judgment, clearly not, sir. A motion for a directed verdict would not lie until the close of the presentation of proof by the House managers in support of the articles of impeachment. The evidence which will be presented by the House managers will include testimony as well as documentary material and that testimony does not become part of the record until given.

Mr. COHEN. Mr. Chairman?

Mr. LOTT. Mr. Chairman?

The CHAIRMAN. The time of the gentleman from Virginia has expired.

I recognize the gentleman from Wisconsin. Is he seeking recognition?

Mr. KASTENMEIER. Mr. Chairman, yes.

The CHAIRMAN. The gentleman is recognized for 5 minutes.

Mr. KASTENMEIER. Mr. Chairman, I would like to take this time to yield to my colleague, Mr. Danielson, because on the question which



nags at us on specificity I think he has something further to contribute.

The CHAIRMAN. The gentleman from California is recognized.

Mr. DANIELSON. I thank my colleague, Mr. Kastenmeier, for yielding.

The points raised by the gentleman from New Jersey, Mr. Sandman, and others along his line, I am fearful have a motivation perhaps, and intent which we must avoid in this case of impeachment; namely, by specifying some one overt act, following one of the articles, one of the listings of impeachable offenses, we might thereby narrow the area of proof under which the prosecution of this case, the manager in the Senate, would be entitled to produce evidence.

By stating, for example, under the first item of the making of false statements to investigative officers, or whatever that is, if we were to list a specific false statement that may have been made on let us say June 30, 1972, would we not then in the Senate be limited in our proof, or limiting our proof to evidence which would relate directly to that specific false statement?

Mr. DENNIS. Would the gentleman yield?

Mr. DANIELSON. In a moment I may yield.

Likewise, the fact of notice pleadings, which our counsel, Mr. Jenner, has pointed out, is clear here. The President is put on notice as to the specific types of impeachable conduct which we allege against him. This is enough to alert him, to give him notice as to what are the charges. And bear in mind that if and when this matter reaches the Senate, it will be accompanied not only by a committee report, but, of course, by the final articles of impeachment, and he will then, if he desires, have the right to make a motion for a bill of particulars or related motion, the idea being to request a greater specificity in the charges against him. Or, if some of those charges appear to be a little bit vague and uncertain as to time, and place, and manner, he can make a motion to make more specific and certain, and aided by the results of those motions, he will have a wealth of information, everything that he could possibly need to make his own defense in this case.

In essence, in this case he is in a better position simply because, and I know this cannot be charged to him at the present time, but as a practical matter, and in the real world in which we are operating, the President does have some 40 volumes of evidentiary and statistical matter already at his disposal and in his office, and I think that unless we are to stultify commonsense we are going to acknowledge that that is a fact.

I would say this, if this committee should decide in order to lessen the concern of our colleagues on the other aisle list any specific item of factual information in these articles, it must be couched in such language, and the committee report worded in such language that it is imminently clear that proof in the Senate would not be restricted to those specific items.

Mr. DENNIS. Would the gentleman yield?

Mr. SANDMAN. Would the gentleman yield?

Mr. DANIELSON. I yield back to my donor. It is not my time. I yield back to Mr. Kastenmeier.

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. The gentleman from Wisconsin has time remaining.

Mr. KASTENMEIER. Mr. Chairman, I yield back the balance of my time.

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. The gentleman from Indiana is recognized for 5 minutes.

Mr. DENNIS. Mr. Chairman, I would like to ask one question of my friend from Maryland briefly, if he could give me his attention for just a moment. On the theory you advanced of your article this morning as I understood you, and am I correct that before the acts of alleged agents and subordinates could be attributed to the President you would have by some means and some type of evidence to establish the existence of the policy which you allege he had adopted, is that correct?

Mr. SARBANES. The acts of the subordinates have to be carrying out the policy of the President.

Mr. DENNIS. Yes; and before you could prove them as against the President, you would have to first establish policy, would you not?

Mr. SARBANES. Well, there is a possibility of ratification involved here, which I think the gentleman—

Mr. DENNIS. But before you could attribute their acts to him on your own theory, you would have to have a policy there which they were carrying out, isn't that right? You would have to have the policy established first?

Mr. SARBANES. Not if there was a ratification involved, and there could be a ratification involved on the part of the President with respect to acts of his subordinates.

Mr. DENNIS. You would have to prove a ratification then.

Mr. SARBANES. Absent a ratification, there would have to be an established policy.

Mr. DENNIS. What the gentleman is really doing, under another name, is adopting a theory of conspiracy, isn't he?

Mr. SARBANES. I was asked that question this morning, and while I indicated I did not tie the article to the proof of a criminal conspiracy, I did say that the article contained elements of a conspiracy theory; yes.

Mr. DENNIS. And first by a Horn Book law you have got to prove that the conspiracy exists before the acts of the co-conspirators are attributable to the principal. That is just elementary, is it not?

Mr. SARBANES. Well, the President can intrude into that conspiracy and ratify events. If that happens, then I think the gentleman would recognize that those acts are then part and parcel of the President's responsibility.

Mr. DENNIS. I suggest to the gentleman that proceeding on the theory he is proceeding on, he better consider, if he has not, and of course, he may have, just by what evidence he is going to establish this policy or conspiracy or whatever you want to call it, because until he does that, the acts of these other people are not going to mean a thing, in my opinion.

Now, shifting to another matter, I just would like to talk about this matter of specificity for a moment. In a criminal charge, I just

read the criminal rule, and that is the existing criminal rule. This is at least a quasi-criminal case, and my friend from California, Mr. Danielson, I am sure is aware of the due process clause. And the very reason why we require specificity is the exact reason why my friend from California seeks to be against it. It is for the exact purpose that a man may know what he is charged with, and that the proof may be held down, indeed, to that with which he is charged. And I suggest that ordinary due process of law absolutely requires that.

Now, I am not going to yield for a minute. No one contends and I do not contend certainly that you have got to plead in an indictment all of the evidence by which you intend to support your specific charge. But, you do have to say, if you are charging the man with making false and misleading statements, you do have to say in that on April 14, 1973, he did say to Henry Petersen, Assistant Attorney General of the United States, the following, so that he will know. He cannot be required under the Constitution to look back over everything he may have said sometime that somebody is now going to say was false or misleading. You have got to specify to that extent, and there is only one precedent in this particular case, and that is the case of Andrew Johnson. And if you will look at the articles set forth on page 154 of our own publication, you will find that they were exceedingly specific.

On a certain date he discharged Secretary Stanton contrary to the Tenure of Office Act by writing him the following letter. And on a certain date he conspired with one Lorenzo Thomas to make him Secretary of War when——

Mr. DANIELSON. Would the gentleman yield?

Mr. DENNIS. I will yield for about 30 seconds, but——

Mr. DANIELSON. That is about all the gentleman has.

Mr. DENNIS. Well, I hate to yield to you then, but I would like to hear an answer to that

Mr. DANIELSON. I wonder if I understood the gentleman correctly in that I understood him to say that if we specify these acts in our accusatory pleading, the evidence to be educed at the trial is restricted to those items?

Mr. DENNIS. Why of course, and that is the whole purpose, and what you want to do is give a man no chance to know what he must meet, and then you bring in anything you happen to think of, and it is not constitutional, and it is not fair, and just because you are a congressional committee you cannot just tear the Constitution up and throw it away. And that is what you want to do here.

Mr. DANIELSON. Would the chairman yield 2 minutes to the gentleman that he could yield to me to respond, please?

The CHAIRMAN. The time of the gentleman has expired.

Mr. DENNIS. I do not want 2 minutes to yield to him.

Mr. DANIELSON. May I——

The CHAIRMAN. The gentleman from Maine has been seeking recognition. Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman.

The CHAIRMAN. I recognize you for 5 minutes.

Mr. COHEN. If I could, I would like to address a question to the gentleman from Maryland, Mr. Sarbanes.

Mr. Sarbanes, I would assume that in each of the subheadings under the article that you propose to substitute, and let me say that I think these statements and the conclusions I can agree with most if not all of them, but let me turn to page 1 under article I, where you list subtitle 1, making false and misleading statements to lawfully authorized investigative officers and employees of the United States.

Now, would it be fair for me to assume that you would rely upon certain—Mr. Dennis said essential facts—I would hesitate to use the word operative facts in this context, but is it fair to say that you would rely upon one, two, three, or four, specific dates, an operative set of facts to support that general statement, the making of false or misleading statements to lawfully authorized investigators? Is that fair to say that you have that in mind?

Mr. SARBANES. Yes, although in most of these instances, when it is finally detailed in the report, I would assume there would be many more instances than the number the gentleman suggests—one of the points is that there is a course of conduct and not a single event.

Mr. COHEN. I understand, and would it be fair to say that you would probably refer to the summary of information that has been prepared by Mr. Doar and Mr. Jenner, such as summary pages 30 through 32 to support that specific operative set of facts?

Mr. SARBANES. Well, I would assume that the report would go further than that. The report could do that, but I would also assume that the report would spell out the matters I indicated in the response I gave this morning to the gentleman from Illinois.

Mr. COHEN. But the problem that I have had for several months now, and usually with counsel, Mr. Doar and Mr. Jenner, you may recall that at each time we issued a subpoena, I specifically asked you, inquired and was always rejected, as to whether or not we might attach a specific justification which you set forth in great detail justifying the issuance for those subpoenas and the reasons why we needed them, and I would just like to inquire, I think I know the answer you will give me, but is there any reason why a document could not be attached to the proposed articles of impeachment, with a phrase to the effect "All of which is set forth with greater particularity in the appendix attached hereto." In other words, getting into the civil pleading.

I happen to agree with counsel, Mr. Jenner, that we are not talking necessarily about criminal pleading, but perhaps civil pleading and we do have notice of pleading in civil cases and we also have a very well established doctrine of incorporation by reference.

Now, wouldn't that be helpful in this particular instance?

Mr. DOAR. It is my understanding, Mr. Congressman, that this material would be included in the report and would go along with the articles. Now, whether it is attached that way or attached to the pleading, it is my understanding further really is immaterial. But generally speaking any civil pleading that I have been familiar with is that you don't incorporate this by reference. You furnish it by way of answers to interrogatories or other discovery, pretrial procedures.

Mr. COHEN. But it certainly would be helpful in this instance to at least incorporate by reference several operative sets of facts supporting the general allegation which again I can agree with, that the mak-

ing of false and misleading statements to lawfully authorized officers, I agree with that, there were false statements made. I think we can by the simple act of incorporating by reference clear away the problem really.

Mr. RANGEL. Would the gentleman yield for a question?

Mr. COHEN. I yield to Mr. Rangel, the gentleman from New York.

Mr. RANGEL. Thank you. I wonder as we try to talk about specifics so that the President would be in a better position to defend himself whether we really take into consideration that the mandate of this committee is to report to the House of Representatives and it seems to me that if we got bogged down with specifics before the House of Representatives has worked its will, that perhaps we would not give the general recommendation to the House that it rightfully deserves. It is not our constitutional responsibility to impeach the President but merely to report to the House. So that it seems to me that we should not be talking about specifics but give the maximum amount of information to the House of Representatives so that they can deal with the problem constitutionally.

Mr. COHEN. I yield to the gentleman from Illinois, Mr. Railsback.

Mr. RAILSBACK. Thank you. I thank the gentleman for yielding.

Mr. Doar, I wonder if I could direct a question to you. I wonder if in past impeachment cases it has not been the procedure that the Judiciary Committee has recommended and then on some occasions the House of Representatives itself has formally drafted and prepared articles of impeachment which were then submitted to the Senate. In other words, it is my recollection that there may have been cases where the House Judiciary Committee simply made a recommendation that the House itself had the responsibility of drafting and adopting the articles of impeachment based on the recommendation and I wonder if we couldn't do it that way. What is your feeling about that?

Mr. DOAR. My understanding is that has been the past practice.

Mr. RAILSBACK. I thought that was the—

The CHAIRMAN. The time of the gentleman from Maine has expired.

Mr. HOGAN. Mr. Chairman?

Mr. MOORHEAD. Mr. Chairman?

The CHAIRMAN. Before we proceed, the Chair would like to state some propositions.

First of all, we do know that we are proceeding under a very unique proceeding. Impeachment has offered us except for the case of Andrew Johnson no guidelines, no precedents. It is a fact, however, that the rules of evidence do not apply as such.

The rules that will be the rules that will apply should this impeachment proceeding move on into the House and then to trial in the Senate, will be the rules that the Senate will adopt. We do know as a matter of fact from impeachment proceedings and the research that has been extensive, and I—all I need do is recall to the Members of the House that the House of Representatives has indeed impeached without any articles of impeachment except merely to impeach, and that on a mere motion, a privileged motion of any member of the House, that the House could move to impeach.

So that therefore this discussion and this issue requiring specificity in order to lay the groundwork for articles of impeachment seems to me to be begging of a question which I think has long been settled.

What we do here is to proceed with deliberations concerning the proposition that certain articles of impeachment be recommended by this committee to the House of Representatives.

Mr. RAILSBACK. Will the chairman yield?

The CHAIRMAN. In the report that the committee will then furnish the House of Representatives, that information will be specifically included together with that—counsel for the President as has been properly pointed out by the gentleman from Maine would be provided with all of the information which is contained in the summary of information which details all of the specifics and that prior to trial in the Senate, upon proper request by counsel for the President, should it reach that stage, discovery and other proceedings, that these materials would be then provided.

And I believe that this affords all of the opportunity for fairness in this proceeding to insure that the House of Representatives not act as a trial body under the exacting rules of evidence as we know them because this as a matter of fact, and all of us are aware, I think, who have been long wrestling with this question, that the House of Representatives is indeed not the trial body but the body merely recommending articles of impeachment even if they may be in the broadest sense.

Mr. HOGAN. Will the Chairman yield?

Mr. HUTCHINSON. Mr. Chairman?

The CHAIRMAN. I recognize the gentleman from Michigan.

Mr. HUTCHINSON. I thank the chairman for yielding. If I understand the chairman's remarks, it is that perhaps this committee in working on articles of impeachment so-called, that our responsibility is not now actually to perfect any articles but simply to decide whether or not we should recommend impeachment, and that those recommendations could be included in a report, and so on.

However, somewhere down the line the House of Representatives has got to draft some articles of impeachment, which in the opinion of the House will stand the legal test in the Senate and if that is so, I wonder whether or not—whether the House will look to anybody else but this group in the Judiciary Committee to do that very task.

So, Mr. Chairman, it seems to me we have that responsibility and we might as well give our attention to those problems right now.

The CHAIRMAN. I do not want to take more time except that I must correct the gentleman from Michigan who I am sure would want me to set the record straight, does not want to misunderstand me. I did not state that we should not perfect the articles. What I merely stated was a legal proposition that in impeachment proceedings, there is no requirement in fact that the articles be specifically set out. That is all that I stated.

Mr. LOTT. Mr. Chairman?

Mr. MOORHEAD. Mr. Chairman?

Mr. LATTI. Mr. Chairman?

The CHAIRMAN. Now, I recognize—I have to go to this side. I recognize the gentleman from Missouri, Mr. Hungate.

Mr. HUNGATE. I thank the chairman and I would like to begin by commending our colleague, Mr. Sarbanes, who seems to be the target for tonight, on a rather excellent job I think of explaining what he

has worked out here and what is going on. This reminds me a great deal of an old saying of our former distinguished chairman, Mr. Celler, "I can give you explanations, I can't give you understanding."

I think Mr. Sarbanes has done an excellent job.

The impeachment grounds, as the chairman has indicated, indeed are quite broad. As I understand it, in the case of Andrew Johnson, they passed a resolution of impeachment, came back and drew up nine articles, went over in the Senate, decided they needed some more and drew a couple more. So going into all of this great, I hesitate to say specifically, I really can't say specificity—I didn't mean to say it.

[Laughter.]

As we get into all these legal terms, it is a lot of fun, for 38 lawyers, 38 good lawyers, I think—well—37 good lawyers. It is a lot of fun, but we forget perhaps that in the House of Representatives they aren't all lawyers and the public likes it that way, I think. They may like it better. As for strict standards of proof—I saw where one of the distinguished Senators said yesterday that some of them had differing views from the discussions we had about rules of evidence. The Senate will decide on the rules of evidence and as I recall in the *Johnson* case they did. They overruled the Supreme Court's Chief Justice so many times that he finally threatened to quit and leave unless they behaved a little better.

So I think it is educational for us lawyers but the doctrine of impeachment, is as strong as the Constitution and as broad as the King's imagination, and we have that problem now, perhaps.

All the technicalities just remind me of the story of an old Missouri lawyer—the fellow was kind of a country fellow and got a case finally in the Supreme Court. He was nervous. He got up there and was arguing along and one of these judges looked down at him and he said, "Well, young man, where you come from do they ever talk the doctrine of 'que facit per aluim facit per se?'"

Well, he said, "Judge, they hardly speak of anything else."

[Laughter.]

Let me tell you I think Mr. Haldeman faked it per aluim and Mr. Ehrlichman faked it per aluim there is lots of evidence. If they don't understand what we are talking about now, they wouldn't know a hawk from a handsaw anyway.

Seriously, we know what we are discussing. It is really a question of pleading and I think we are seeking to—piling inference on inference. There you go again, piling inferences.

We sit through these hearings day after day. I tell you, if a guy brought an elephant through that door and one of us said that is an elephant, some of the doubters would say, you know, that is an inference. That could be a mouse with a glandular condition. [Laughter.]

And perhaps one of them might be, but not 12, or even 28 volumes.

Let's talk some about this evidence. I know these distinguished gentlemen know the law far better than I and they realize that we don't have to plead it with all that great whatever that word was.

Article III, I would like to talk about it a little, "approving, condone, acquiescing, counseling witnesses to give false and misleading statements," et cetera, et cetera.

In the March 21, 1973, transcript relating to the conversation from 10:12 to 11:55 a.m., Appendix 6 of the GPO conversations.

Mr. DEAN. There is no doubt I was totally aware what the Bureau was doing at all times. I was totally aware of what the grand jury was doing. I knew that witnesses were going to be called. I knew what they were going to be asked, and I had to.

NIXON.

I infer that is the President.

Why did Petersen play the game so straight with us?

DEAN. Because Petersen is a soldier. He kept me informed. He told me when we had problems, where we had problems. He believes in you and he believes in this administration. This administration has made him. I don't think he has done anything improper but he did make sure the investigation was narrowed down to the very, very fine criminal thing which was a break for us. There is no doubt about it.

There would be another break if you narrowed this thing down to the head of a pin.

NIXON. He honestly feels that he did an adequate job?

DEAN. They ran that investigation out to the fullest extent they could follow a lead and that was it.

NIXON. But the point is, where I suppose he could be criticized for not doing an adequate job. Why did he call Haldeman? Why didn't he get a statement from Colson? Oh, they did get Colson.

DEAN. That is right. But see, the thing is, is based on their FBI interviews. There was no reason to follow up. There were no leads there. Colson said, "I have no knowledge of this" to the FBI. Strachan said "I have no knowledge of—you know, they didn't ask Strachan any Watergate questions. They asked him about Segretti and the——"

The CHAIRMAN. The time of the gentleman——

Mr. HUNGATE [reading]:

as a result of some coaching, he could be the dumbest paper pusher in the bowels of the White House.

The CHAIRMAN. The time of the gentleman has expired. I recognize the gentleman from Maryland, Mr. Hogan.

Mr. HOGAN. Thank you, Mr. Chairman.

As the chairman and Mr. Railsback correctly observed in the Andrew Johnson impeachment, the committee brought to the floor a general recommendation of impeachment. The House approved it and then and only then was a committee appointed to draw up a list of charges to go to the Senate. Over there as someone observed there were not only some added but there were some ignored. I think one of the traps that we are falling into here is that we are drawing this grand jury analogy much further than it warrants. A number of us in our remarks in general debate tried to indicate what an impeachable offense is. Now, if you subscribe to the idea that an impeachable offense must be an indictable offense then perhaps you have some justification for arguing that we are really here drawing an indictment. But such is really not the case.

We are not a grand jury. We are operating here under a constitutionally authorized extra-legal power. We are not involved in a criminal proceeding. So that when we go to the floor, we can go with as broad and nebulous an impeachment resolution as we possibly desire to draw. It is amendable on the floor depending on what rules we operate under. It is even by the precedents amendable in the Senate.

Mr. RAILSBACK. Mr. Chairman, could we have order?



The CHAIRMAN. The committee will be in order. The gentleman will suspend until the committee is in order.

Mr. HOGAN. But even beyond that, Mr. Chairman, I think we are really straining here as we talk about precedents. There are not really that many precedents. There have not been that many impeachments and there have been far fewer, there have been only about a dozen impeachments and if my memory serves me, there were only three convictions and those impeachments are contradictory one with the other.

So I think we are really not looking at—the responsibility that we have here is to go forward with a recommendation to the House. That is really all that we are about.

Now, I personally think it would be preferable to have specific charges naming places and dates and times and names but it is not essential and to argue that that is our responsibility under the Constitution is just ignoring what the Constitution gives us for the impeachment power.

I yield back the balance of my time.

I yield to Mr. Wiggins from California.

The CHAIRMAN. The gentleman from California.

Mr. WIGGINS. Thank the gentleman for yielding.

Let's not confuse apples and oranges. We do not have any responsibility to be specific at all here with respect to the recommendation we make to the House. Indeed, the House is able to recognize any member at any time to impeach Richard Nixon without any degree of specificity.

We are talking rather about what happens at the Senate. This is a job which will be ours to carry to the Senate.

Now, ladies and gentlemen, each in turn yesterday and the day before, we paid tribute to the Constitution. Now is the time to put up or shut up because we are talking about the Constitution. We are talking about the fifth amendment and the rights of a respondent not on the floor of the House of Representatives but at the bar of the Senate. And specificity is required over there because the Constitution demands it.

Wouldn't it be a damning indictment, Mr. Chairman, of this committee if, after all this time and all this money, we were unable to state with specificity what this case is all about? I think it would.

Now, all we are asking, Mr. Chairman, is that we get about it and do it. We shouldn't argue over that point. We should be precise and I suggest we do so.

The CHAIRMAN. I recognize the gentleman from Michigan, Mr. Conyers, for 5 minutes.

Mr. CONYERS. Thank you, Mr. Chairman.

I would like to observe, if I might, that we have spent a good deal of time talking and I think we may have reached some agreement upon the validity of the Sarbanes substitute. That is to say, we realize that we are going to bring to the floor of the Congress this matter so that—to attempt to detail the policy or the plan that has been suggested as the basis for article I in the substitute would be a little bit ludicrous.

Mr. Sarbanes has outlined on at least three or four 5-minute periods of members' times the basis for that continuing course of conduct and

it seems that for us to continue to say that we want to write it in article I of a resolution of impeachment would be highly unsound.

Now, as I look across this article, we have only nine subsections. We allege a plan, that the President using the powers of his office made it a policy to delay, impede and obstruct the investigation of the illegal entry of the DNC on June 17, 1972, and as I look at the first specification of making false or misleading statements to lawfully authorized investigative officers and employees of the United States, it is clear that on April 18, 1973, for example, the President talking to Mr. Petersen, the Assistant Attorney General of the United States, he told Petersen to stay out of the Fielding break-in investigation because of reasons of national security.

That was a false or misleading statement. We have documented it any number of times in the course of the months that we have been here. And so for us to have to write this in is an unnecessary act because there is not just one or two, there are several, any number of them, any of which, since as I read this pleading, it is in the alternative, would be sufficient.

The means used to implement the policy of the President have included one or more of the following, emphasis, one or more of the following, and we allege nine specific courses of conduct that demonstrate that the President of the United States used his office to obstruct justice.

Now, with that in mind, Mr. Chairman, I think that after we analyze any number of these reasons, that demonstrate a course of conduct, those of us who are ready to support the notion of impeachment as embodied in this very plainly worded language should be able to support it before this evening is over and I would hope that we would move to that point so that we could at least accept this very first article before the end of this evening.

Mr. WIGGINS. Mr. Chairman?

Mr. CONYERS. I would yield if I have time remaining to the gentleman from Pennsylvania for an observation, Mr. Chairman.

The CHAIRMAN. The gentleman from Pennsylvania is recognized for 1½ minutes.

Mr. EILBERG. Mr. Chairman, I think that we should be very careful about the subject of specificity. As you have said, this is a unique proceeding and in that sense I believe it is one that is developing all the time. Almost every day we are learning something more about the situation with regard to the White House. I suggest, Mr. Chairman, that the—as we know, the Supreme Court has ordered 64 subpoenas to be turned over to the Special Prosecutor. Suppose that those tapes or portions of them become available to the House or even the Senate at a later time. I am afraid that if the articles or subheadings are too specific that some subjects that may arise out of those 64 subpoenas that might ultimately come into our possession might be denied consideration when they should be considered by the House or by the Senate.

Also, Mr. Chairman, we have a trial we know is coming up in September of Mitchell, et al, and it is entirely possible that facts or situations may develop which may bear on the ultimate outcome in the trial in the Senate if there is one and I say that we should not be so

frozen in here that we can't use additional information, and we don't know what other disclosures may come about, what other situations in the next few weeks and couple of months, and I suggest, Mr. Chairman, that the outline in article I as suggested by the gentleman from Maryland is definitely enough and still gives us that flexibility so additional facts may be brought to bear.

Mr. WIGGINS. Would the gentleman yield?

The CHAIRMAN. The time of the gentleman from Michigan has expired. I recognize the gentleman from Mississippi, Mr. Lott.

Mr. LOTT. Thank you, Mr. Chairman.

The CHAIRMAN. For 5 minutes.

Mr. LOTT. I thought that determining the specific charges was what this was all about. Now, there has been some talk about including all the other specifics and a report. I wonder who would prepare that report. Would it be left just to the staff? I think that is a question that we should determine, particularly if we come out here with very general articles.

Mr. Chairman, I think that as we reach this important milestone in these proceedings, the actual drafting of the articles of impeachment, that the American people see the way in which it proceeded, see the confusion that we are faced with, the disagreements about where it should be general or specific. After 7 months it looks like something of this great importance would have already been answered.

I had intended to offer a motion to strike article I as proposed by Mr. Donohue because it was so general, but because of the present parliamentary situation involving the Sarbanes substitute I will not do so. He has given some specifics here but I assume he hasn't offered to make them as a part of his substitute.

I have already heard some things here today offered as specifics in support of this article that I think are not supported by the evidence. I feel very strongly that several sections of article I that has been offered obviously are not supported by the evidence. It is clear to me that the use of certain words in this article try to impute the wrong of the aides of Mr. Nixon to him. As I said yesterday, we are not attempting to impeach John Mitchell, John Dean or others. The line must be drawn directly to the President. But I feel really it is futile at this point to argue the evidence and I want to speak instead to the fact that this article is far too general in nature and involves duplicity and prejudicial joinder through collective use of evidence.

What clearly emerges to me from the Constitution's original context and its impeachment provisions is an overriding concern that due process be a guiding principle in an impeachment action. The Constitution's concern with enunciation of grounds for impeachment under article II, section 4, reads inescapably that the one most important element of this is due process and that that has to be the grounds in the impeachment articles and they must be sufficiently specific for a respondent to be impeached. They must be also specific and explicit for the Senate to conduct a fair trial.

Mr. Chairman, surely there are members of this committee who would perhaps vote for an article of impeachment that was specific and had different wording but I do not see how they can live with the Sarbanes amendment. We cannot send this mockery to the Senate and

after all, that is what in my opinion we are determining here now, what we will send to the Senate.

I yield the balance of my time to Mr. Wiggins.

The CHAIRMAN. I recognize the gentleman.

Mr. WIGGINS. I thank the gentleman for yielding. I do appreciate the comments of my friend from Maryland, Mr. Sarbanes in attempting to flesh out what he understands the evidence to be in support of this policy which is at the heart of article I.

But I think in fairness we ought to expose the total, totality of that evidence to ourselves and to those who are watching these deliberations.

Let me go through it quickly. It is contended that there was a pattern of conduct commencing on or about June 20. That tape contains a gap. The only, only evidence we have as to what occurred during that gap are the notes of Mr. Haldeman and those notes indicate a discussion of a public relations offensive and that is all.

Now, we can be suspicious but those suspicions have not provoked any grand jury who has investigated this, has not provoked Judge Sirica, has not provoked anybody else to return criminal indictments because they don't know. Let's recognize that that gap is a suspicious circumstance to me but this is not evidence.

We have the situation of the President being less than candid according to Mr. Sarbanes in saying that was no White House involvement on June 20, 1972. But let me tell you what John Dean said. He said he talked to Liddy on that day and you know what Liddy told him? Liddy first—the statement was made by Dean as follows: "First, Gordon," he said, "I want to know whether anybody in the White House was involved in this," and Liddy, the architect of all of this, replied, "No; they were not."

And that continued to be the state of the President's knowledge thereafter.

If that is the kind of quality of evidence upon which this plot is hatched, this policy, let me say that it is ambiguous. It is confusing. It might be susceptible of different interpretations but we know what the law is. You can't do it on that basis. If there is a benign interpretation pointing toward innocence we must take it. We must take it.

Well, let me say that that first essential charge that the President made in his policy is not supported by the evidence.

The CHAIRMAN. The time of the gentleman from Mississippi has expired.

Mr. FROELICH. Mr. Chairman?

The CHAIRMAN. The gentleman from Pennsylvania is recognized for 5 minutes.

Mr. EILBERG. Mr. Chairman, I yield to the gentleman from Massachusetts, Father Drinan.

Mr. DRINAN. Thank you very much for yielding.

It seems to me those who have challenged the wording here have to turn up with another policy. The wording here in the Sarbanes substitute is very clear. We are not saying that Mr. Nixon invented this policy. He made it his policy to carry out the obstruction of justice. It seems to me that that is the only possible conclusion that one could come to when you look at the vast amount of evidence following the

incident at the Democratic National Committee. If this is another explanation it has not turned up in all our, of our investigations.

It seems to me the situation is unique for many reasons and the principle one is this, that the President has withheld the evidence. In 69 cases of possible impeachment in all our history only one individual has ever sought to withhold evidence from an impeachment inquiry and that person invoked the fifth amendment. What are the alternatives to that careful wording, "The President made it his policy?" Can you say that all these things are mere chance? There is absolutely no coherent explanation. You can take that but lawyers resist that. There has to be some explanation of all of the tragic events that took place out and inside the Oval Office. Can we say that the President knew nothing about what Haldeman and Ehrlichman were doing, that they themselves conspired alone? That is contrary to all of the evidence.

I say therefore that we have to name some policy that the President had and in this substitute we say he made it his policy to obstruct justice. I would love to find another policy. I have searched for 6 months with the other lawyers here for another policy but I have come to the inescapable conclusion that the President made it his policy to impede the investigation of the burglary in the Democratic National Committee.

I yield back to the gentleman from Pennsylvania.

Mr. EILBERG. Mr. Chairman, I yield the balance of my time to the gentleman from California, Mr. Waldie.

The CHAIRMAN. The gentleman from California is recognized.

Mr. WALDIE. Mr. Chairman, I too want to address myself to the question of the President's policy. Understand, we are dealing with policy that will not bear the scrutiny of light. It is an action and a plan and a policy of the White House and the highest people in the level of Government in the United States and it simply will not bear scrutiny. They cannot stand to have anybody examine this policy. So therefore to demand that we provide a parchment scroll of a Presidential declaration that on such and such an hour of such and such a day a policy was established by the White House to engage in a coverup of illicit activities is really quite unrealistic and is not really advanced I think with the objective and the desire to really get at the truth. But a policy of this nature, a policy of this nature, is a surreptitious covert policy that evolves. Its parameters and its limits are not known at its inception.

The policy is we have got to cover up. We simply cannot let the people of America know that we have financed political intelligence activities that have resulted in the burglary of the Democratic National Committee Headquarters at the Watergate Hotel because once they find that out, they will find out that whole litany of covert activities authorized and financed by the White House, by Hunt and Liddy, the principals of the Watergate burglary, the "plumbers," that whole litany of illegal covert activities described by John Mitchell as the "horrors of the White House." It is the policy, is clear. You can't permit the American people to discover that because you are in a national election year. The policy is to protect the election of the President. It is implicit. Nobody denies it. The policy is to protect the election of the President by immediately taking actions to cover up the entry and the

participation and authorization and part of that entry illegal and surreptitious into the Watergate Hotel by the White House and by the Committee To Re-Elect the President. And it didn't start late in the period after the entry. It started immediately. Howard Hunt, one of the burglars, and Gordon Liddy, another of the burglars, who were not picked up the night of the 17th—five were picked up, they were not, they were across the street in the electronics gear room—immediately went back to the White House and picked up \$10,000 in cash that he had been paid by Gordon Liddy from campaign funds of the Committee To Re-Elect the President for emergencies such as this, and he gave that \$10,000 cash early the morning of the burglary to an attorney to defend those burglars.

The CHAIRMAN. The time of the gentleman from Pennsylvania has expired.

Mr. WALDIE. Mr. Chairman, I seek recognition on my own part.

The CHAIRMAN. The Chair will have to recognize the gentleman on the other side first. I recognize the gentleman from Wisconsin, Mr. Froehlich, for 5 minutes.

Mr. FROEHLICH. Thank you, Mr. Chairman.

When Mr. Lott had the floor he asked a very important question. I would like you, Mr. Chairman, to reply or the staff to reply. Who is going to write the committee report that will go to the floor that will show the members of the House specifically what is behind each individual paragraph in this article of impeachment? Is the staff going to write that? Does the committee have any right to review, to approve that report as a group or is it going to be written outside of our view and without our knowledge?

The CHAIRMAN. The gentleman is advised that any report is a committee report and that the report would then, of course, if any individual member wanted to exercise individual views, additional views or views other than the views of the majority of the committee, could so do. But the report, however, would be a report prepared by the committee and the report of the committee circulated to each of the members and, of course, all of us would have to recognize that as has been done, as will be done, that the assistance of staff is always employed but nonetheless the work is the work of the committee and unless that committee report is authorized by majority of the committee it does not become a report of the committee.

Mr. FROEHLICH. Thank you, Mr. Chairman.

Mr. Jenner, when you indicated that some time prior to trial in the Senate a demand could be made by the attorney for the President for something akin to a bill of particulars, what point in time were you referring to?

Mr. JENNER. I think I was responding to Congressman Hogan's question as to whether the President's counsel could wait until just before the Chief Justice opened the trial and then move with respect to the articles of impeachment. I don't wish to compromise Mr. Hogan but I think that was the question he asked.

Mr. FROEHLICH. I don't want that answer, Mr. Jenner. I want the answer as to what point in time would it be proper for the President's attorney to demand in behalf of the President a bill of particulars as to this impeachment.

Mr. JENNER. Subject to rules adopted by the Senate, he can do so any time after the Bill of Impeachment is lodged with the U.S. Senate. However, he must do so at a reasonable time before trial.

Mr. FROELICH. And where is the bill of particulars?

Mr. JENNER. The House of Representatives, that is, the managers for the House of Representatives.

Mr. FROELICH. Would you say that this could be an unconstitutional delegation of the sole power of impeachment to a small group of individuals in behalf of the House of Representatives as a whole since the power of impeachment as you so eloquently have stated time and time again rests solely in the House of Representatives.

Mr. JENNER. I think.

Mr. FROELICH. Solely—

Mr. JENNER. Excuse me.

Mr. FROELICH. Solely in the House of Representatives.

Mr. JENNER. Congressman Froelich, I think not, because a bill of particulars is but a pleading. It goes only to the scope and specifics of the proof and not to the article of impeachment. As to the time the respondent must request a bill of particulars, that will be fixed by rules to be adopted by the Senate. None of this goes to fundamentals. It is only practice, pleading and procedure. No delegation of power is involved.<sup>1</sup>

Mr. FROELICH. Mr. Chairman, members of the committee, I have just paged through the October 1973 publication of this committee on impeachment and I am looking at the article for Senator Blount in 1798 and I am looking at the article for impeachment of Judge James H. Peck and I am looking at the article for the impeachment of Judge West H. Humphrey. And I am looking at the articles of impeachment for Judge Charles Swaine. And each one of these articles of impeachment are specific. They tell the date, they tell the place, they tell the occurrence, they tell what was wrong and what laws were violated if there were laws violated. And it seems to me that in fairness and in justice to the President of the United States, after 8 months and over \$1 million, that this committee could come to a conclusion as to what the specifics of this impeachment are in detail and with specific charge and I am ready as I indicated yesterday in some instances, in some cases if the case is put in the proper form and the proper shape, to vote for an article of impeachment. But I don't think that the articles placed before us are in specific enough detail to bring me to that conclusion today.

I yield to the gentleman from Maryland.

The CHAIRMAN. The time of the gentleman from Wisconsin has expired. I recognize the gentleman from California, Mr. Waldie.

Mr. WALDIE. Mr. Chairman, let me continue elaborating on the events that transpired immediately, immediately after the arrest of five employees of the Committee To Re-Elect the President, one employee of the White House, two employees of the White House that were fugitives immediately thereafter on June 17, to determine whether the President began implementing immediately a policy of

<sup>1</sup> On Aug. 6, 1974, in a letter to Chairman Rodino, Mr. Jenner clarified his statements concerning the function of a Bill of Particulars in an impeachment proceeding. The text of Mr. Jenner's letter is printed at pages 561, 562 of this volume.

coverup, and I say he did and the evidence justifies that. It was an evolving policy but the essential component of that policy was coverup, protect the 1972 election, but the information that occurs from Saturday, June 17, immediately after the burglary, through June 22, is enormously important information.

These people are involved in the scenario as it is referred to at that particular moment in time. In Washington are Mr. Ehrlichman, Mr. Liddy and Mr. Kleindienst and Mr. Dean. In Key Biscayne are the President and Mr. Haldeman and Mr. Ziegler and in Los Angeles are Mr. Mitchell, Mr. Magruder, Mr. LaRue, Mr. Mardian. The phone conversations between those three varied points in this country practically burns up the wires immediately on Saturday as they discussed this enormously dangerous event. Dangerous to whom? Dangerous to the President.

The first notice that the President got of it, according to Colson, was when he called the President—the President called Colson, as the President had apparently heard from Haldeman who had already heard that Hunt, an employee of the White House, was involved, Hunt, he of the Plumbers and the White House horrors. When the President was informed by Colson of what had happened it is alleged the President threw an ashtray across the room. That is not the reaction of a man who is not aware.

The CHAIRMAN. The gentleman will suspend until the committee is in order and the committee is not in order.

The gentleman from California.

Mr. WALDIE. I thank the chairman and I thank the committee.

That is not an action of an individual who is learning for the first time in his life that there has been a burglary in Washington, D.C. There are burglaries that occur in Washington, D.C. with sufficient frequency that when the Presidents are informed, they don't throw ashtrays across the room.

The next thing, we understand on that same day Mr. Liddy, one of the burglars, goes to the Attorney General, and at the direction we are told of Mr. Mitchell, the former Attorney General, goes to Mr. Kleindienst, the very brain of the burglary, and says to Kleindienst, you have got to get our boys out of jail. And Kleindienst said, "Get out of here." Interestingly enough, that's all Kleindienst said or did. He didn't say what are our boys doing in jail, or who are they, and let's get to the bottom of this. And what are you doing out of jail.

The Attorney General didn't say that. So, he understood what was going on.

Mr. Ehrlichman called the President. Actually he didn't, he called Mr. Haldeman on Sunday, the day following the burglary from Washington to Key Biscayne, and he told Mr. Haldeman of the involvement of Mr. McCord, a security officer for the Committee to Re-Elect the President, and the involvement of Mr. Hunt, who was an employee of the White House, and whom the President knew had been involved in plumbers activities. He told Mr. Haldeman that Mr. Haldeman was told by Ehrlichman that Mr. Mitchell had authorized, with Haldeman, a plan to procure political intelligence by bugging. He told him it was financed by CRP funds, and that Hunt and Liddy were in this team that had been involved in previous activities.



Now, do you really believe that Haldeman, the closest confidant and advisor of the President, on Sunday, June 18, when told these startling and damaging facts did not convey them to the President in Key Biscayne? Was he that disloyal that he would not convey to the President something as enormously important to the President's re-election? That does not add up to commonsense. Of course, he had to convey it to the President.

The next thing we know in terms of Presidential involvement is that the President called Mr. Colson, a good friend of Mr. Hunt, on Monday, from Key Biscayne. The President calls Mr. Colson and they talked for an hour. Mr. Colson had probably had more phone calls from more people in high levels of Government over those 2 days since the break-in than anybody in America, because Mr. Colson had brought Mr. Hunt into White House employ, and they were worried about Mr. Hunt because Mr. Hunt at that point was a fugitive. They only knew he was employed by the White House, but they wanted to know, is he off the payroll of the White House. So, everybody was calling Mr. Colson, including the President, and everybody that called testified they called Mr. Colson to find out about Hunt. Mr. Colson said that wasn't why the President called him. They discussed Watergate. It was common knowledge in Washington, there had been a burglary and the President wanted to carry on a little conversation from Key Biscayne, calling Colson in Washington on a subject just to talk about a burglary. You know he asked Colson what he knew about Hunt.

Then, June 20, all the President's men gather in Washington, and the meetings that take place are these: Haldeman, Ehrlichman and Mitchell meet. Dean and Kleindienst join with them on the morning of the 20th, and they discuss strategy for Watergate. That's all they really discuss, and there is really no question about that in anybody's mind.

The CHAIRMAN. The time of the gentleman has expired.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. I recognize the gentleman from California, Mr. Moorhead, for 5 minutes.

Mr. MOORHEAD. Mr. Chairman, I can well understand why some of the gentlemen, ladies here today are discussing the tapes again rather than the issue at hand, because they are on the wrong side of the most important issue, one that I feel is as important and dear to the citizens of this country as any right that they have under the Constitution. I think we have to uphold our Constitution and the rights of the people who are accused of any kind of offense. You cannot arrest a man for suspicion of a robbery at 10th and L in Washington, wait until the time of trial and have him build up his defense, and then offer evidence against him for an offense on an entirely different day, in another city, that he has not had a chance to defend.

There must be a time when the issues are formed, when they are joined, where the man knows what he is charged with specifically.

Now, I do not blame the people who have drawn these articles. I know the reason. Mr. Hungate said you had to have understanding. I think we have understanding. The understanding is that all the way through these hearings Mr. Doar and Mr. Jenner told this committee you will be the judge of these offenses, you will be the judge as to

whether this particular fact is truly a fact or whether it is not. You will be the judge of determining whether this fact constitutes an offense or whether it does not.

But, now what we are asked to do as a committee is to not determine whether those facts are true or whether we accept them, or whether we accept a particular version of them. We are asked to pass on a lot of generalities that really do not allege specific charges, that do not tell the President what we believe he is guilty of and what he is not. And the reason is, obviously that you cannot get 21 people on this committee to agree to many of these things which have not been proven, for which there is not adequate evidence. So, I do not blame anyone that wants to go by these very general, and in some cases misleading statements.

Let me read one place in this article. The "means used to implement this policy have included one or more of the following," and they allege nine different things. One or more. Well, I suppose if you read that carefully it says that there may be eight of them that are false, but maybe one of them is true.

I think the President of the United States, as well as any other citizen of this country, has a right to know what he is charged with, and has a right to prepare a defense.

Now, I know we have got 39 volumes of materials, some of it is hearsay, some of it is newspaper articles, some of it is quotes from other tapes, and some of it comes from all kinds of various sources and a lot of it is not evidence, could not be admissible in any court of law.

You cannot tell the President or any other person we have got these general charges, but you may be accused of anything that is in this book, or anything else that we want to bring in at the last minute. Let us follow the Constitution that we have talked about and which many people have said last night was so important. I believe in that Constitution. I believe in that Constitution more than almost anything in this world. And I will fight and defend it in every way that I possibly can. It is more important than Richard Nixon or me or anyone else in this room. That Constitution is the thing that has given us freedom. But, I would tell you that if this modern law that is supposedly taking effect, and I do not think that it has reached California yet, thank goodness, if that's ever really adopted into law, the people of this country have lost some of their constitutional rights and they are in bad shape, because you would not know what you were accused of until you get on trial.

I think the President of the United States has more opportunity or should have more opportunity than that.

And getting down to specifics, we have been told that a bill of particulars could be had when this thing goes to the Senate, and we heard earlier in the newspaper at least, that Mr. Mansfield was discussing giving the President 54 days to prepare a defense, to offer arguments against the petition that might be filed by this body.

But, I read the other day that he was considering starting the trial immediately so that it would get all of the good press just prior to election, I am sure, so we would be in the newspapers then, on television, pointing out the mistakes the Republican administration had made on prime time right up to election day. This is not justice. No

justice, and I cannot laugh at jokes that Mr. Hungate or anyone else might tell in a serious time like this.

This is an important time for the people of America, and we are fighting for far more than Watergate or any specific thing.

I will fight for it, for clean Government, and I am against anything that is dirty in Government or that involves the morals of our elected officials. But, surely let us have the rights that are given to us under the Constitution, and give it to the President as well as we would anyone else.

Mr. HOGAN. Would the gentleman yield?

Mr. MOORHEAD. Yes, I will yield.

Mr. HOGAN. Mr. Jenner, I am sure that you would not want to be misunderstood, but in response to Mr. Froehlich's question about who draws up the charges, you said the managers on behalf of the House. I am sure you did not mean to imply that the House would not approve those charges before they went to the Senate, or did you?

Mr. JENNER. I think that is a very good question. May I give it a minute's or a few seconds' thought, because, Congressman Hogan, a bill of particulars in criminal proceedings does bind the indictment. It would be my judgment that perhaps the bill of particulars would have to be submitted to the House.

Ms. HOLTZMAN. Would the gentleman yield, if he has time?

Mr. MOORHEAD. Yes.

Ms. HOLTZMAN. I think it is very important to note that this is not a criminal proceeding, and that the Constitution of the United States specifically provides that in the event that somebody is impeached, that shall not bar him from trial or indictment or conviction according to law. So, we are not talking about a criminal procedure at all.

And I am very surprised to hear the gentleman's statement that the rules, the Federal rules of civil procedure which were enacted in the late 1930's have not yet reached California, because I am well aware of them, at least in New York. And they certainly bind Federal proceedings throughout the United States. And those rules of civil procedure allow for notice pleading. This is basically a civil case, and a civil proceeding, and I do not think that we ought to be bound by criminal practice. And I think that these articles as they have been proposed are eminently fair, and eminently within established procedures.

Mr. MOORHEAD. May I have an opportunity to answer?

The CHAIRMAN. The time of the gentleman from California has expired.

Mr. MOORHEAD. May I have 30 seconds to reply to the question as put to me?

Mr. SARBANES. Mr. Chairman, I ask unanimous consent that the gentleman be given an additional minute.

The CHAIRMAN. Without objection, the gentleman is recognized for 1 additional minute.

Mr. MOORHEAD. There is a basic difference in court hearings in which the defendant almost immediately upon being presented with the charges gets a bill of particulars. In this case there would be no way that the President could know of the charges until very shortly before he was to begin trial.

I would also point out that while this may not be a criminal procedure, impeachment is a penalty almost worse than death to any human being that would be President of the United States, to get that penalty, and certainly he deserves to have his constitutional rights protected. And in almost every single impeachment that we have had in recent years the President has had the right to know what he was charged with before he went to trial. Are we going to degenerate the benefits that we give to a President or any other accused in this modern day when supposedly we are expanding the rights of freedom instead of restricting them?

Mr. BROOKS. Would the gentleman yield?

The CHAIRMAN. The time of the gentleman has expired.

Mr. MAYNE. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. Does the gentleman from South Carolina, Mr. Mann, seek recognition? Mr. Mann?

Mr. MANN. Yes, Mr. Chairman.

The CHAIRMAN. The gentleman is recognized for 5 minutes.

Mr. MANN. Mr. Chairman, I do not think that I have to yield to anybody in my desire to see that these proceedings are fairly conducted. And if it goes to a trial in the Senate, the proceedings there will be fairly conducted. But, as I read this article, the gravamen of the offense is that Richard M. Nixon, using the powers of his high office, made it his policy and in furtherance of such policy did act directly and personally and through his close subordinates and agents to delay, impede, and obstruct the investigation of such illegal entry; to cover up, conceal and protect those responsible; and, to conceal the existence and scope of other unlawful covert activities.

Now, this article goes on to list nine means by which that impeachable offense was carried out. Now, I am astonished to infer that there are those here who would assert that we should list in this article all of the evidence that applies to this charge. It is very clear, of course, that if we were to attempt to do that we would have a document equaling several of these books.

But, what bothers me most of all are the loose statements, some of which we have just now heard, that the President is going to go to trial without knowing what the charge is. The President, if he goes to trial, is going to trial not only knowing what the charge is, but knowing what every word, every i and every t, every bit of evidence that has been made available to this committee which has been presented here in the presence of the President's counsel. If we get further evidence, I can assure you you will have my support to see that the President's counsel is present when it is presented to this committee, and that he is present when it is presented to the House of Representatives, if new evidence is presented at any time.

So, what are we talking about sneaking up on someone? The evidence, all of it, will be available to the President tomorrow or the next day. He has gotten it up until now. He has some, of course, that we would like to have.

Now, I do not find that this proceeding, which admittedly has sparse precedent, is in violating the constitutional rights of anyone who stands before the bar of justice possessed of every fact known to the prosecution and possessed of the description of the charge against

him. What surprise—what surprise can I conclude other than this is not a substantive objection; it is a procedural matter. It is a matter that I must suggest that I somewhat predicted as I realized that the arguments made here in front of these cameras would not be made for the benefit of me as a member of this committee. I do not think Mr. Sandman would be so strident or even so partisan if these proceedings were not being conducted to influence the opinions of the American people.

But, I am here to study the law and the evidence, and to see that Richard Nixon gets a fair trial, that he is advised of all the evidence against him, and in my judgment, the charges that are included in article I notify him of what he is charged with. And they set out something extra, the means by which he is alleged to have committed that offense of obstruction of justice.

Let us be reasonable.

Mr. WIGGINS. Would the gentleman yield?

Mr. MANN. We have had the advice of Mr. Jenner, who because of his objectivity stands stripped of his title as minority counsel, a man who was chairman of that body of the American Bar Association, the Advisory Committee to advise the Supreme Court on Rules of Evidence and Criminal Procedure, and the foremost expert in the United States, I submit on this subject. And he tells us that in his judgment this article is adequate to advise the respondent of the charges against him.

Mr. WIGGINS. Would the gentleman yield?

Mr. MANN. Fairness is what is required. I would settle for nothing less. And I submit that this article grants fairness in the highest tradition of American jurisprudence, and of the power of this body to exercise its serious power of preserving our Government through the power of impeachment.

I yield back the balance of my time.

Mr. WIGGINS. Would you yield for a second, please?

The CHAIRMAN. I recognize the gentleman from Iowa, Mr. Mayne, for 5 minutes.

Mr. MAYNE. Mr. Chairman, I yield 3 minutes to the gentleman from New Jersey, Mr. Sandman, and reserve my remaining 2 minutes.

The CHAIRMAN. The gentleman is recognized for 3 minutes.

Mr. SANDMAN. I am amazed that I have heard some of the arguments I have heard here today. I cannot believe this is the same group that made all of those speeches yesterday and the night before, everyone of them making that Constitution, the Constitution the most valuable thing that was every made, and it is, and yet, so willing to cast aside the most important provision therein, the one known as due process, that one now for their own convenience they will throw under the rug.

Isn't it amazing that they are willing to do anything such as resistance to making the thing specific? Isn't it amazing they have so much, but they are unwilling to say so little? Isn't it amazing? They are willing to do anything except make these articles specific. It is the same old story, you know, when you don't have the law on your side, you talk about facts. If you don't have the facts on your side, you just talk, and that is what a lot of people have been doing today.

Now, we talk about this going to the Senate. What about the House of Representatives? Are you going to get down there and say fellows, we have got so many stories to tell, here is 40 books that have been put together by Doar and Jenner, you just rehash those, you don't need anything else. Don't pay any attention to the constitutional law or anything else, just look over these things, and maybe this is the reason why they didn't want any witnesses. Never wanted a witness.

Why didn't Dennis get his right to have the big man here, Hunt, the man who had demanded the money? The most important witness never testified before this committee because this committee doesn't want witnesses. This committee doesn't want to be specific. This committee just wants to rehash tales. That's what this committee wants, and that I say is a miscarriage of justice.

Now, three-quarters at least of all of the charges levelled against this President will not be involved in any articles of impeachment presented to this committee tonight and everybody knows it. And the President is entitled to which ones are left. And every lawyer knows that it is the only fair thing to do, the only fair thing to do. You don't require an adversary to do all kinds of things. What is so wrong about a simple sentence saying what happened, what is so difficult about that? You have so much, but you are so—

The CHAIRMAN. The 3 minutes have expired.

Mr. MAYNE. Mr. Chairman, I yield—

The CHAIRMAN. You have 2 minutes remaining.

Mr. MAYNE. I yield those 2 minutes to the gentleman from Indiana, Mr. Dennis.

The CHAIRMAN. Mr. Dennis is recognized for 2 minutes.

Mr. DENNIS. I thank my friend from Iowa.

I merely want to suggest that there are at least two points that deserve some thought. First, if you are going with Mr. Sarbanes' theory, you have got to figure out when and how did the so-called policy come into being and prove it, because until and unless you do that, you cannot attribute the act of anyone else to the President of the United States.

Second, if you are going to rely on implementing the policy by the allegations here, you are going to have to come up with when and what were the specific occasions on which that policy was implemented by, for instance, making false statements to investigating officers, or counseling with witnesses to give false testimony.

Now, those things either happened or they didn't. If they did it is very easy to specify them and the law says that you have got to do it. And it does not make any difference whether the respondent knows or doesn't know some of the things you may have in your mind. He is still entitled to a good charge. That is due process of law. And you cannot satisfy it by saying that statements in a committee report can perform the function of a good charge or that you don't have to pay any attention to the rules of evidence with the Chief Justice in the Chair, because an impeachment thing is somehow different. You have got the votes, of course. You can vote anything, but somewhere down the line you are going to have to follow the law and the Constitution and prove your facts.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. The time has expired.

I recognize the gentleman from Ohio, Mr. Seiberling, for 5 minutes.  
 Mr. SEIBERLING. Thank you, Mr. Chairman.

I quite agree that due process is absolutely essential, that the Constitution requires it in an impeachment proceeding as in any other judicial proceeding under our Constitution. But, due process does not require any specific form of proceeding. It requires certain essential matters of substance, such as notice to the defendant or the person who is on trial as to the nature and the detail of the charges against him.

Now, as Mr. Jenner pointed out, under our modern practice we do not do that any more in the indictment or the similar documents. We get into the details through other matters of discovery and that is just as much due process as to do it in the old way. What was done 107 years ago in the trial of Andrew Johnson is not necessarily the only way to do it. But, even then I would like to read some authorities older than Andrew Johnson's trial.

Alexander Hamilton in the Federalist Papers with respect to impeachment: "The nature of the proceeding can never be tied down by such strict rules in the delineation of the offense by the prosecutors as in common cases served to limit the discretion of courts in favor of personal security." And Justice Story in his commentaries on the Constitution says: "It is obvious that the strictness of the forms of the proceedings in cases of offenses of common law are ill adopted to impeachment. The adherence to technical principles, which perhaps distinguishes criminal law more than any other, are all ill adapted to the trial of political offenses in the broad courses of impeachment. There is little technical in the mode of proceeding. The charges are sufficiently clear, and yet in general form. There are few exceptions which arise in the application of the evidence which grow out of mere technical rules and quibbles."

Now, every time we talk the facts, why the gentleman from New Jersey wants to talk about procedure. And when we get to the procedure, the gentleman from Indiana wants to talk about the facts. And I suggest that the facts still need to be discussed as the gentleman from New Jersey originally started to ask us, and I yield the balance of my time to the gentleman from California, who I thought was doing a pretty good job of it.

The CHAIRMAN. The gentleman from California, Mr. Waldie.

Mr. WALDIE. I thank the gentleman, but a 5 minute segment of the Watergate saga is a pretty hard one. But, we left the principals after the President and Mr. Colson on Sunday, following the burglary, were having an hour's chat, in which they discussed the Watergate, but only in general terms and never discussed any particulars at all, according to Mr. Colson. And we don't know, according to the President.

But, we do know something that happened on June 20. All the President's men gathered from all over this country back into Washington. They came from California, they came in from Florida, and they came to Washington where they could meet and confer and decide what to do about this threatening calamity, the threatening calamity of the re-election of the President, the most important thing all of them had facing their entire lives, the re-election of this President, and their blind dedication to that objective is just not even arguable.

And after they met and discussed their policy, the President met with Haldeman, his closest adviser, and they discussed the Watergate. That is in Haldeman's notes. Everybody agrees there was a discussion of Watergate on that tape. That 18½ minutes is all that is missing. There is nothing else missing on that tape except the discussion of Watergate, right after that big strategy session.

Now, it is now determined that human hands erased that 18½ minutes while it was in the exclusive and sole possession of the President. And it is attributable to sinister forces. My own inclination is to believe that it is an inescapable inference that the President had that 18½ minutes erased because it would have been so devastating in its incrimination of the President immediately in the coverup plan.

But, there is something that was not erased. There was a dictabelt of a phone conversation or the recollection that the President had of the events that day.

The CHAIRMAN. The time of the gentleman has expired.

Is the gentleman from Ohio seeking recognition?

Mr. LATTI. Yes, Mr. Chairman. I thought maybe they would never get down this far.

The CHAIRMAN. The gentleman is recognized for 5 minutes.

Mr. LATTI. Thank you, Mr. Chairman.

It is interesting to sit this far away from the center of power. You get all of these statements before you get an opportunity to speak.

And let me just say, Mr. Chairman, that I was surprised as a member of the Rules Committee to hear that you propose sending these articles of impeachment in a general form and attached thereto as a supplement I might say, in the report to the Rules Committee for consideration.

Well, now Mr. Chairman, members of the Rules Committee are supposed to read those reports before we make a finding and report a rule to the House of Representatives. And certainly you would not want us to void our own rules. I think that we ought to ponder about that, the same way that Members of the House of Representatives ought to ponder about what you are proposing.

You are saying that we are going to send these general articles of impeachment to the floor of the House, without being specific, without saying the time, the place, and say to the Members of the House of Representatives who are not on this committee, go through those 38 or 40 volumes, try to sort out what we think as members of this committee are impeachable offenses, and make a judgment thereon. Is that what we are saying? If you are, other Members of the House, good luck.

Well, Mr. Chairman, I think we ought to rethink what we are proposing. A common jaywalker charged with jaywalking any place in the United States is entitled to know when and where the alleged offense is supposed to have occurred. Is the President of the United States entitled to less?

Yes, he is entitled to know, even though the Constitution from which impeachment proceedings comes does not specifically spell out, but you have to do so. The sixth amendment is still in the Constitution, and are we going to waive it in this case? They did not waive it in any other impeachment case. Are we going to set a new precedent



here and waive that? Where are these civil libertarians? I think it is high time that we stopped to rethink what we are doing.

Nobody is trying to delay the action here, because I well know that anytime that the chairman puts down that gavel and says call the roll, the votes are here to do exactly as you like. Whether or not Mr. Jenner or Mr. Doar prepared these articles, which they probably did, they certainly ought to agree with what they prepared, and I thought that was a question that really did not have to be asked by the Chair as to whether or not these gentlemen agreed with what they had prepared. I think that was useless.

But, I think that it is important that we do something fair for the other Members of the House. Let us forget about the President of the United States. We are not the only Members of the House of Representatives who are going to be called upon to make a judgment. And to throw 38 or 39 books at them and say here, here's what we meant, let us just take a look at them. On the first page at the bottom, No. 1, he is charged with making false or misleading statements to lawfully authorized investigating officers.

Well now, how many investigating officers are there of the United States and who are they, and what are they, and employees of the United States. Well, in June of 1972 there were only 2,650,000 employees in the U.S. Government. In common decency and common sense, we ought to be more specific than that.

Now, I cannot agree with everything that Mr. Jenner does, who has been alluded to as an outstanding member of the bar, and he is.

**THE CHAIRMAN.** The time of the gentleman has expired. The time of the gentleman has expired.

I recognize the gentleman from Massachusetts, Father Drinan, for 5 minutes.

**MR. DRINAN.** Mr. Chairman, the gentleman from New Jersey states that we are unwilling to make the articles specific, and the gentleman from Indiana asks when and what. Let me give you some specifics that the President obviously knows.

On June 20, 1972, John Mitchell said that the Committee To Re-Elect had no legal, moral, or ethical responsibility for the Watergate break-in. Two days later the President publicly said John Mitchell has accurately stated the facts. On that same day the President said the White House has had no involvement whatsoever in Watergate.

The very next day, however, the President directed Haldeman to get the CIA to head off the FBI investigation. Everyone knows that really the intent to have the CIA tell the FBI that the CIA has an involvement in Mexico was because of the laundered money.

The President of the United States had to know about the laundered money because the checks had shown up and they were traceable to the bank account of Bernard Barker.

Mr. Helms, the head of the CIA, told Mr. Haldeman and Mr. Ehrlichman that there was no involvement of the CIA in the Watergate and the FBI can go forward in Mexico and that we have no interest in that matter.

But, Haldeman said that he feared that the FBI should not do this and Ehrlichman said that the President himself was concerned about the Mexican money and the Florida bank account. This is the Presi-

dent who 3 days earlier said we have no involvement whatsoever in the Watergate.

And at the end of that meeting on June 23, Ehrlichman advised Walters that Mr. Dean would take over in negotiating with the CIA.

On June 26 Mr. Walters told Mr. Dean that no FBI investigator could compromise any CIA activities.

On June 27, Dean met with Walters once again, and he had the effrontery to ask the CIA to deviate from the basic purpose and to pay bail for the people who were involved in the Watergate, and to pay them salaries. And Mr. Walters said I shall not unless the President orders it. And Dean said that Mr. Ehrlichman has approved of it and Dean went back to Ehrlichman and Ehrlichman said to Dean to push Walters a little harder. And the very next day Mr. Dean summoned Mr. Walters to his White House office, and Dean brought up the five Mexican checks and the check of Mr. Dahlberg and Dean again asked Mr. Walters to have the CIA stop the FBI investigation.

There is no involvement. We have no specifics? On June 28, Dean and Ehrlichman knew that Gray and Helms were not going to collaborate and they canceled the whole thing.

Other specific things happened in that long summer 2 years ago. Dean obtained raw data from Pat Gray on the FBI Watergate investigation and Mr. Dean turned that over to the Committee to Re-Elect Attorney General Kleindienst had refused that information, and that information impelled the investigation.

Other things happened in that early August of 1972. The President himself asked Mr. Ehrlichman to arrange that Stans not be compelled to go before the grand jury, and that was granted, and similar compromising arrangements were made by the special prosecutor for Colson and Krogh and Young and Chapin and Strachan.

They gave testimony before the prosecutors and not before the grand jury.

The only possible explanation is the adoption by the President himself, a policy to obstruct the investigation of the break-in.

I yield the balance of my time to the gentleman from California, Mr. Waldie.

The CHAIRMAN. The gentleman is recognized.

Mr. WALDIE. Thank you, Mr. Chairman.

Back to the evening of the 20th where the President is having a conversation with John Mitchell and they are talking about Watergate, but the phone unhappily is a phone that is not hooked to the taping system. It is one of those things that happened on the 20th and we just have to live with those unhappy circumstances. So, the only evidence we have of what they really talked about was a dictabelt where the President recorded as was his custom, the events that occurred during the day and on that dictabelt he got to this paragraph and said:

I also talked to John Mitchell, tried to cheer him up a bit. He is terribly chagrined that the activities of anybody attached to his committee should have been handled in such a manner. He only regretted he had not policed all his people more effectively in his own organization.

And that's another one of those sad circumstances where then there is a 40-second or 42-second silence on that dictabelt that we have to put up with.

But, after that we know then that John Mitchell knew what had happened.

There is no question about it that John Mitchell told the President that CRP people were involved.

Next day John Mitchell put out a press release saying he deplored that Watergate break-in but fortunately there were no CRP official people involved, no campaign people. And Ron Ziegler joined in that and said you are right and neither are there any White House people in that third-rate burglary attempt.

Now, John Mitchell lied. Everybody agrees. Everybody but John Mitchell, for the record. John Mitchell lied. There were campaign people involved and he knew it. Ron Ziegler lied. Ron Ziegler may not have known it because Ron Ziegler has an ability not to understand many things that occur. But, there were White House people, Hunt and the President knew Hunt was there.

Then on the 22d, here is the overt acceptance of the President of the plan, the President asked in a press conference what he thought about the Watergate burglary, were any members from the White House involved, and he said John Mitchell and Ron Ziegler have told you about that even and they told you the truth and I agree with them. He said there were no White House people involved. He said there were no Committee To Re-Elect the President people involved. There were. He knew it.

At that point he joined publicly, in front of all of the American people, the plan to cover up as he, of necessity, thought he had to. He could have gone before the American people at that press conference and said it is incredible, this fellow Liddy went to my Attorney General out on the golf course and told him to bail out these fellows, and I fired the Attorney General because he didn't report it and didn't put Liddy in jail. He could have said, I have been told that there is CRP money involved, that they found down there money from the Committee To Re-Elect the President, I can't believe that. That's beyond my—in fact, you know what I did, I threw an ashtray across the room when I was told that. That's what he could have said if he wanted to tell the truth.

The CHAIRMAN. The time of the gentleman from Massachusetts has expired.

Mr. WALDIE. But he said that there were no White House people and no campaign people involved. The President lied and the President covered up.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Thank you, Mr. Chairman.

As the chairman and the members of the committee know, I do intend to support an article, perhaps two articles, of impeachment. But, I think that this article which is proposed, the substitute article proposed by the gentleman from Maryland, is very faulty, very poor, and the weakest article which I think the committee could recommend.

Now, it has been correctly said that the process of impeachment is not a criminal proceeding but a civil one. We know that our counsel has confirmed that by recommending that we should only consider that the rule or the doctrine of evidence that must prevail here is that of clear and convincing proof, not proof beyond a reasonable doubt.

But, what we have before us here is an allegation of a conspiracy. Now, it is called a policy and this is the thesis which our counsel, Mr. Doar, has propounded when he took on this partisan posture in the final days of our investigation, and the thesis is that the President organized and managed the coverup from the time of the break-in itself or immediately afterward. And, of course, this is the thesis that my colleague from California and from Massachusetts are trying to develop.

And it just does not hold water. It is weak. It is fuzzy and it is contradictory.

The theory just does not exist.

Now, it may be that on the 21st of March, the next year, when the President learned about this and talked about it with Haldeman and Mr. Dean that he got involved in another type of activity. But, in June and in September they weren't talking about that at all. As a matter of fact on September 15, when the President talked about this subject with John Dean, he asked John Dean: "What the hell do you think is involved? What's your guess?" And what does John Dean say? He says "I think that the DNC planted it, quite clearly." So that you see, at that time while they are trying to consider what the political implications are, they suggest that possibly the Democratic National Committee themselves planted the bug in order to try to trap the Republicans, and it was kind of the political shenanigans that were going on. And on September 15, if you consider that testimony, if you consider that tape fairly and clearly, and honestly, you will see that they are talking about the political implications, not criminal implications, insofar as the White House is concerned.

And so, what it seems to me that we have got here, we have got a criminal charge, and then we are trying to, then we are trying to support it by noncriminal allegations and noncriminal proof.

Now, it is very well and good to say well, all of the proof is there, we have got 38 volumes. But, you know the kind of proof that you are recommending that was supporting this thesis of this policy or conspiracy is proof which consists of circumstantial evidence, of innuendo, of inferences. Now, what circumstantial is this President and his counsel supposed to look at? It's in the 38 volumes, that's fine. But, that is not the kind of specific allegations that the President is entitled to have. It seems to me that in connection with this article, in connection with this charge of conspiracy, we should be clear and definite. Where is the direct evidence? Sure, the gentleman talked about people lying. As a matter of fact, the basis for this immediate involvement of the President is a press release put out by John Mitchell which somehow they try to attribute to the President. There is no indication, no proof in this hearing that the President ever saw or heard or had anything to do with the press release or knew or didn't know whether it was false or true.

It seems to me clearly what we should require if we are going to charge the President with a criminal offense, which is what this is doing, is proof beyond a reasonable doubt, because that is the standard which we are required to apply in connection with a criminal charge.

So, I am hopeful that the committee will either require that we do make these charges specific, if they are going to be offered at all, or

that we dispose of this proposed article and go by the one which relates to the President's oath of office in which the President did, indeed, fail to take care to see that the laws were faithfully executed and the violation of his constitutional oath. This does not require that kind of specific proof and allegation.

And also I think we should turn to the subject of whether or not the President is not in contempt of Congress and subject to an impeachable offense because he refuses to comply with our subpoenas and provide the information that we have required.

So those are the things that we should be looking at.

The CHAIRMAN. The time of the gentleman has expired.

Mr. RAILSBACK. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. I recognize the gentleman from New York, Mr. Rangel, for 5 minutes.

Mr. RANGEL. Mr. Chairman, and my colleagues, it seems to me that our constitutional responsibility is really to respond to the House of Representatives. It seems to me that we would be taking on more than our mandate allows if we were to draw some very narrow allegations and not have the evidence that we have heard over all of these months presented to the Members of the House. I think their judgment as to what final allegation, if any, is going to be presented to the Senate, we cannot be presumptive enough that it just meets our needs, and to cut off to them the benefit of all of this, all of these months of research.

If members are having some type of a problem in terms of what they are prepared to vote for in connection with an article of impeachment, it seems to me that this does not necessarily have to be done in a parliamentary way to just delay these proceedings. I think that each member would have the opportunity as to what in his own mind he believes is an impeachable offense. And I personally believe there is enough in the edited transcripts for that purpose.

But, he should not preclude the information which we have compiled from reaching the floor of the House of Representatives. We merely have the responsibility to report our findings to the House, and if we vote articles of impeachment they may, in fact be rejected by the House.

If we suggest to them that three or four articles have been voted on by the majority of the members of this committee, and they see fit to expand, then it seems to me at this late time that if the Members want facts, my God, we have had more than enough facts to reach questions of whether or not we should vote on a particular article. But, if there are Members that are prepared to vote on a particular article, it seems to me we should be prepared to vote on that, and then to move so that we can work our will and report back to the House of Representatives.

I think that is our restrictive constitutional responsibility, and we should not allow our vote to be interpreted as being the vote of the full House.

Mr. RANGEL. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. There is still discussion, but the Chair is going to recess at this time until 8 o'clock.

[Whereupon, at 6:08 p.m., the committee was recessed, to reconvene at 8 p.m. this same day.]

## EVENING SESSION

The CHAIRMAN. The committee will be in order.

I recognize the gentlelady from Texas, Ms. Jordan, for 5 minutes.

Ms. JORDAN. Thank you, Mr. Chairman.

Mr. Chairman, this committee has spent 2 days receiving and listening to very eloquent arguments. We talked about the Constitution, and we talked about the serious nature of the impeachment process and all which was said, we were telling the truth. We believed what we were talking about.

Now, Mr. Chairman, this committee is called upon to get to the matter of the consideration of articles of impeachment.

It apparently is very difficult for the committee to translate its views of the Constitution into the realities of the impeachment provisions. It is understandable that this committee would have procedural difficulties, because this is an unfamiliar and strange procedure. But, some of the arguments which were offered earlier today by some members of this committee in my judgment are phantom arguments, bottomless arguments.

Due process. If we have not afforded the President of the United States due process as we have proceeded through this impeachment inquiry, then there is no due process to be found anywhere. Well, what did we do? The Judiciary Committee under all of the historical precedents available does not have to allow counsel to the President to participate in its proceedings, but this committee, because of its grace, because it wanted to be fair, because of its interest in due process, allowed, suffered, if you will, counsel to the President to sit in these proceedings every day.

He was present. Was he gagged? Was he silent? No, because this Judiciary Committee cast a rule which allowed the President's counsel to speak.

Now, one might say, well, certainly that is minimal due process. All I am saying is that the committee was under no compulsion to do that, but voted to do it. So, the President's counsel was here and received every item of information this committee received.

The President's counsel suggested witnesses he wanted called and heard by this committee. They were all called. They were all heard. The President's counsel was afforded the right to cross-examine witnesses.

Now, I know that our rules disallowed cross-examination on said question. But, those of you who know of the capacities and abilities of Mr. St. Clair would certainly say that he cross-examined the witnesses who appeared before this committee.

What else did he do? He submitted to this committee a reply brief in addition to making an oral argument in response to all of the material which this committee had received.

Now, we have heard a lot today about specificity, about our case being so general that no one would be able to answer it, that the President would not be advised of his rights, and that therefore would not be able to answer or prepare for his defense.

Well, Mr. St. Clair felt that the case presented before this committee was specific enough for him to file a reply brief and to engage in oral argument, both before this committee.

The subpoenas. We were very reluctant to issue a subpoena to the President of the United States. But the President asked us for additional time to respond to our first subpoena and we said we want you, Mr. President, to have due process, so additional time is yours. And we gave him that time.

Due process? Due process tripled. Due process quadrupled. We did that. The President knows the case which has been heard before this committee. The President's counsel knows the case which has been heard before this committee. It is a useless argument to say that what we would do is to throw 38 or 39 books at the House and say, you find the offenses with which the President is charged, and say the same thing to the President.

We talked about a report and we say that the report will be filed along with the bill of impeachment, resolution of impeachment. That report will be filed and it will contain the rather detailed specific particularized information so that no one can question whether the President has been advised of the allegations against him.

The CHAIRMAN. The time of gentlelady has expired.

Ms. JORDAN. Thank you.

The CHAIRMAN. I recognize the gentleman from Alabama, Mr. Flowers.

Mr. FLOWERS. Thank you, Mr. Chairman.

I think the gentlelady from Texas makes some good points there. I have some concern, Mr. Chairman, that there might be a false impression being communicated here that this is too general and that we might be engaging too much in our own lawyerly tendencies, and we might convince the people in this audience and in the faraway audience that 38 lawyers on one committee is simply too many lawyers, and I wouldn't necessarily disagree with that.

I think one of the unwritten rules of this House and this committee is that you have to be a lawyer to be on the committee, and perhaps to straighten it out, maybe one of us ought to resign our law license so that we would give a little better balance to the committee.

But, failing that, and I don't intend to do that at this point myself, although some of us may need to rely on that in the future more than we do now, I will just say that I am going to try to speak at least at this time for the nonlawyers in the audience. I am not as much interested in the law as I am in the facts right now, just the facts, sir, and I am directing this to you, Mr. Doar, and other members of the staff that are here before us.

We have before us what—a 2- or 3-page article of impeachment that the operative paragraph, as I see it, is the second paragraph that begins:

"On June 17, 1972" and goes down through "unlawful covert activities," about some 10 or 12 lines later. That is what the real charge is against the President. But, then we have something that comes under the heading of "the means used to implement this policy" and we have nine specific things. Although they do not relate to dates, times and places, they are specific charges.

Would you agree with that, sir?

Mr. DOAR. Yes.

Mr. FLOWERS. Now, are we prepared—are you prepared or other members of this committee prepared to itemize specifically the charges

that would come under those nine specific subparagraphs of article I of the proposed articles of impeachment?

Mr. DOAR. Mr. Congressman, I am.

Mr. FLOWERS. Well, I think that is what I am interested in and I think that is really, Mr. Chairman, what we need to be talking about here. I think there is some merit to a discussion of some aspects of what I would call the operative paragraph, the words that some people are having some problem with, but what we need more than anything else is a discussion of the facts here as they relate to the charges under this article I.

Mr. Chairman, at a later time, and I hope, that we will be able to discuss with staff here, with the various members of the committee, the specific provable factual items of evidence that come under each one of the subparagraph headings of article I, and determine for ourselves here, as I think we must, in a careful and deliberate manner, exactly what facts fit the charges. That is the issue, and I find that as the more important thing than discussing only the language of the charges, although that is something we certainly must consider. I think that the charges are sufficiently stated, for me anyway, and it is a question of whether the facts, the facts as charged here, warrant the impeachment of the President of the United States.

Mr. COHEN. Will the gentleman yield?

Mr. FLOWERS. I yield.

Mr. COHEN. I thank the gentleman for yielding.

If I could just direct a question to counsel, Mr. Doar and Mr. Jenner, and go back to the law for just a moment as to whether either of you gentlemen could tell me as to whether or not a specific allegation or charge is made by reading article I of the Sarbanes substitute, if it were to end after the words "and to conceal the existence of the scope of other unlawful covert activities."

In other words, simply reduce the charge to "on June 17, agents of the Committee for the Re-Election of the President committed illegal entry" and then what happened subsequent thereto that the President, using his powers of his office, to act directly and personally through his subordinates and agents to delay, impede, obstruct the investigation.

In your opinion, would that not be sufficient to place the President on notice as to the specific charge against him and whether or not the other items listed on the 2 pages are really additions which don't have to be there, but are put there for the benefit of even placing the President on more notice?

Mr. DOAR. That is my opinion.

The CHAIRMAN. The time of the gentleman from Alabama has expired but counsel will be allowed to answer the answer since it is important to the inquiry.

Mr. DOAR. Congressman Cohen, that is my opinion. The second paragraph of the Sarbanes substitute is the operative paragraph. It puts the President on notice that he—the committee charges or the article charges that as President of the United States he made the decision or adopted a policy that there would be a plan to cover up the Watergate affair and that in furtherance of that policy, acting personally, individually and also through his close associates and subordinates, he did take certain steps to further the policy. And that allegation is sufficient in my judgment to put the President of the



United States on notice as to what this committee is considering—what this article charges him with.

Mr. FISH. Mr. Chairman?

The CHAIRMAN. Mr. Fish is recognized for 5 minutes.

Mr. FISH. Mr. Chairman, at the outset I want to yield to Mr. Cohen, the gentleman from Maine.

Mr. COHEN. I thank the gentleman for yielding.

Further along this line, Mr. Doar, is it my understanding that you would furnish to the House a complete and full report outlining in detail the specifics to which Ms. Jordan recently alluded to and also whether or not in your opinion Mr. St. Clair would be entitled to request a bill of particulars, at which time you and this committee and the House of Representatives would furnish the specifics to Mr. St. Clair upon that request?

Mr. DOAR. Well, I don't—with respect to the first question I have no doubt that our report would do exactly that, precisely that, specifically that. With respect to the second, what the House might do, the House of Representatives would do with respect to a request by Mr. St. Clair prior to the time that it considered and voted on articles of impeachment would be a matter that would be within the judgment and wisdom of the House just as the matter of Mr. St. Clair's presence here was a matter within the committee's judgment. It is not a matter of right.

Mr. COHEN. But the report that we would prepare would list each and every item relied upon by this committee in its report to the full House.

Mr. DOAR. Yes, it would.

Mr. COHEN. I yield.

Mr. FISH. Thank you.

Mr. Chairman, I certainly concur with the gentleman from Alabama that we should move on from this legal question to the central issue in this case, as to the evidence, the weight to be given the evidence, the strength of the evidence. I hope that in just a couple of questions here addressed to Mr. Jenner that we can move on from this issue.

Mr. Jenner, in your opinion does this bill, this article I, the Sarbanes substitute, violate due process, notice requirements?

Mr. JENNER. Congressman Fish, it does not. As Mr. Doar has stated, the first two paragraphs of the Sarbanes substitute state in sufficient specificity to meet all due process requirements of notice. It satisfies the Constitution in full.

Mr. FISH. So it is your view that article I does put the President on the alert as to specific charges?

Mr. JENNER. It does, sir, and the paragraphs following, numbers one through whatever the number is—

Mr. FISH. Nine.

Mr. JENNER [continuing] afford him additional gratuitous notice so that he may be more fully placed on notice than is required under the due process clause of the fifth amendment.

Mr. FISH. Finally, Mr. Jenner, as to going beyond the present scope of this article, is it not so that in a sui generis proceeding such as im-

peachment that you do not permit your pleading to strangle yourself with respect to evidence that you may tend?

Mr. JENNER. Congressman Fish, very much so. That is the bane and trouble the prosecutors concern themselves with at all times, that overspecificity with respect to indictments, especially in modern times and particularly as to a *sui generis* proceeding which impeachment is, that they not strangle themselves with respect to admission in evidence of that which is pertinent and relevant to the basic and main issue presented on the pleading.

Mr. FISH. Thank you very much.

Mr. Chairman, if I have a moment left I yield to Mr. Dennis.

The CHAIRMAN. The gentleman from Indiana.

Mr. DENNIS. Mr. Doar, a moment ago in answer to the gentleman from Alabama, Mr. Flowers, you said that you were prepared to specify here and if that is true I wonder why you don't do so instead of waiting until the Report of the House and whether you think that a committee report can be used for the purposes of an article of impeachment.

Mr. DOAR. Well, Congressman Dennis, the reason that I am perfectly happy and ready and willing to reply to here and now, it is my judgment that it is not appropriate to make all of the facts, to plead all of the facts in your article of impeachment and certainly I feel very confident legally that the report which would go to the members of the House would be adequate constitutionally to give to the House members the underlying factual basis for this article of impeachment.

Mr. DENNIS. Let me see if I understand you. Of course, I know you say that the article is good but are you asserting that if the article should be faulty that a committee report would make it a good article when it was not?

Mr. DOAR. No; I am not asserting that but I am asserting as positively as I know how that the article is not faulty.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. THORNTON. Mr. Chairman?

The CHAIRMAN. I recognize the gentleman from Arkansas, Mr. Thornton.

Mr. THORNTON. Thank you, Mr. Chairman.

It seems to me that we are faced with the problem that confronts the drafters of pleadings constantly, and that is the conflict in the requirements of trying to be specific in the details and the need to be clear and concise in stating the nature of the charges which are to be brought.

In order to accomplish this, the procedure which is usually followed is to have a clear and concise statement of charges such as the one before us and then to supplement that with a bill of particulars or as has been discussed by the gentlewoman from Texas, Ms. Jordan, a report which would detail in great particular the specifics. I see no great difficulty in proceeding that way and would like to join the gentleman from New York, Mr. Fish, in suggesting that perhaps our differences over procedural matters are interfering with our approach to the very grave and substantive matters which we must consider. I think it is important for each member of this committee to know the

detail of information which does lie behind each of the paragraphs which we have, and our counsel has indicated that he is prepared to give us that information.

We have heard during the day very specific illustrations of some of the detail which supports these charges. And, Mr. Chairman, I just think that we should make every effort to get away from the problem of procedural drafting and move forward to a consideration of the substantive questions which are represented by this document.

I yield back the balance of my time.

The CHAIRMAN. I recognize the gentlelady from New York, Ms. Holtzman, for 5 minutes.

Ms. HOLTZMAN. Thank you very much, Mr. Chairman.

I just briefly want to state that the debate here is whether we ought to follow the procedure that was used and developed centuries ago or whether we in this impeachment proceeding will bring ourselves into the latter part of the 20th century where we find ourselves. It is true that the earlier impeachment proceedings pleaded very specific language. It is also true at that time that they were based on the general civil practice which required specific factual pleadings.

We abandoned that system of specific factual pleadings in 1938 in our Federal court system and since that time have been operating on a notice pleading system which has been held by courts on innumerable times to supply defendants with due process of law. And I think that that is the issue here, whether we are going to bring ourselves up to date or whether we are going to discuss really a phony issue involving antique practices.

I would like to address myself, Mr. Chairman, to the substance of the article before us, and in particular the language which says "subsequent to June 17, 1972, Richard M. Nixon, using the power of his high office, made it his policy to cover up, to conceal and protect those responsible for the Watergate break-in, and to conceal the existence and scope of other unlawful covert activities."

The question was raised earlier today, when did the President make this his policy? Mr. Waldie has been trying to give a chronology starting from at least June 17 and I would like to point to a very important conversation that took place on March 21, 1973, and to what happened in that conversation.

John Dean, counsel to the President, came to President Nixon and said that there is a cancer growing on the Presidency. He said that there has been blackmail, there has been perjury, there has been coverup, there has been obstruction of justice, hush money has been paid to buy silence, clemency has been promised to buy silence. He told this to the President and he said to the President: "I was under pretty clear instructions not really to investigate" this whole matter during the summer. "I worked on a theory of containment." He told the President "I know that Magruder has perjured himself, I know that Porter has perjured himself." He also said to the President that "Bob," that is Bob Haldeman, "is involved in that," the hush money payments, "John is involved in that," John Ehrlichman, "I am involved in that. Mitchell is involved in that, and that's an obstruction of justice."

What did the President of the United States say in response to these revelations? What did he say? He said John, John Dean, "You have

the right plan, let me say. I have no doubts about the right plan before the election, and you handled it just right. You contained it."

In that conversation the President was approving what John Dean had told him about the perjury, about the blackmail, about the theory of coverup, about the clemency, and I would like you to explain to me, those of you who say that the President has not approved this and made this his policy, how that is not so.

I yield back the balance of my time.

The CHAIRMAN. The gentleman from Utah is recognized for 5 minutes. Mr. Owens.

Mr. OWENS. Mr. Chairman, I am going to yield my 5 minutes to the gentleman from California to continue that litany of Watergate activities that he was halfway through.

The CHAIRMAN. The gentleman from California is recognized for 5 minutes.

Mr. WALDIE. We will continue with this story of intrigue and high drama in high Government circles. As you recall, we last left our group of people with the President. With the President less than a week after the break-in announcing to the public facts that, in fact, he knew were not true. When he confirmed the statements of Mr. Ziegler and Mr. Mitchell that there were no Committee for the Re-Election of the President people or no White House people involved in that incident, there were, and he knew it. And that was the first publicly surfaced act of coverup on the part of the President.

But, very shortly thereafter the President continued the coverup, a coverup that was necessary to protect that which all were most concerned about, the fact that he might lose the election in 1972 if the American people understood that the White House was involved in surreptitious entry, and illegal surveillance for political intelligence and all that litany of White House horrors.

So on June 23 another problem had arisen and that was keep those folk quiet who had been arrested, the five that had been arrested that night, Saturday night, June 17 as well as the two who were across the street in a roomful of electronic surveillance, Hunt and Liddy. It took money. It took money to keep them quiet, and if you did not pay them money they would tell. And if they told, everything would fall apart, and the election of the President might be jeopardized.

The first \$10,000 of money we saw was delivered the night of the burglary when Mr. Hunt went back to the White House, if you will, into his safe and took out \$10,000 in cash, the only deal in cash in this operation, and delivered it on behalf of the burglars to keep them quiet.

Then, Dean is operating to bring about the coverup, not to investigate, not to report, but to implement the coverup. And Dean goes to John Mitchell of the Committee for the Re-Election of the President in the period June 23, June 26, somewhere in that area and says Mr. Mitchell, how about you folks putting up the money to bail these people out and to pay their attorneys' fees? And Mr. Mitchell says I don't want anything of it. That's your problem. It's you young fellows over in the White House that brought this idiot scheme to the fore by your Plumbers, by your Hunt and your Liddy, by your break-in of the Fielding office. It was not the Committee for the Re-

Election of the President. It was Haldeman and Ehrlichman operating on behalf of the President and the Committee for the Re-Election of the President wouldn't finance any more of the coverup.

So then Dean goes to the CIA, if you will, and he says to the CIA look, isn't there some way you fellows—you don't have to account to Congress or to anybody and they don't for anything but particularly they don't for money—can't you fellows in the CIA put up enough money to take care of the fellows that were working on behalf of the President. He said it was a national security mission and the CIA gets all turned on usually for national security missions but they didn't in this case and they said no, we are not going to put up money for burglars, no matter for whom they were working and they didn't.

So then he went back to Ehrlichman in the White House, and he said I really need the money desperately, these fellows are about to blow, and he says I need to talk to someone who can raise big money, and he went and was referred to the President's personal lawyer, Mr. Kalmbach, and the President's personal fund raiser.

Now, surely it stretches credibility beyond endurance to believe that the President's personal lawyer, the President's personal fund raiser, would be enlisted in this illegal scheme of raising money without having first gotten approval from the President.

And I believe the inferences are abundantly clear that the President granted approval on the part of Ehrlichman to refer Dean to Kalmbach.

Kalmbach came in that night, the 28th of June, mind you, 17th of June is when the break-in happened and this is 11 days later.

That night he came in and raised \$75,000 by nightfall and got that into the hands of the people that were buying the silence of the burglars.

Now, that takes us up to the end of June when the next act in our drama unfolds, June 30. They call in John Mitchell and they say John, we've got to get you out of the limelight because the press has asked you questions because you are the chairman of my reelection campaign and you know too much, John. And John knew everything. There was not anything John Mitchell did not know at that time about the break-in of the Democratic National Committee.

And so they concocted a story, and it was concocted, we have the information on that conversation, and that story was that John and Martha were having trouble, which they probably were, and therefore, that would be the excuse by which he would allege the necessity of resignation. But, it was, mind you, and so portrayed, as an excuse.

The CHAIRMAN. The time of the gentleman from Utah has expired.

Mr. SANDMAN. Mr. Chairman, may I move an amendment?

The CHAIRMAN. No, the gentleman is not recognized at this time.

The gentleman from Iowa, Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Chairman, I will yield—

The CHAIRMAN. You are recognized for 5 minutes.

Mr. MEZVINSKY. Thank you. I will yield 3 minutes of my time to the gentleman from California to continue his presentation.

Mr. WALDIE. Well, I do want to make clear about John and Martha.

The CHAIRMAN. The gentleman from California is recognized for 3 minutes.

MR. WALDIE. The reason I do that is that there is no question, and the public knew that John Mitchell and Mrs. Mitchell were having some difficulties. Mrs. Mitchell in fact told him that if he didn't leave public office she would leave him.

But that was the excuse given, and in the conversation when they discussed this they all agreed that that was the excuse because the public would understand that and as the President said, anybody would dare criticize a man for leaving this office because of his wife's demand. Well, you know they just wouldn't do that. He put it in more blunt terms, but what they really wanted to do was to get John Mitchell out of the public eye.

That was coverup.

Now, I just think, you see, that through June 30 there was just no question that there was a policy which was to protect the election of the President by concealing the involvement of the White House and the Committee for the Re-Election people in the burglary of Watergate because once their involvement had become known they would go back to the Plumbers' activities involving that break-in of the psychiatrist for Dr. Ellsberg, or Dr. Fielding's office and they would go back to the forging of these cables, designed to implicate John F. Kennedy in the assassination of Diem in South Vietnam. They would go back to the investigations of Senator Kennedy. They would go back to all kinds of very ugly things that were always described, mind you, as national security.

That is the other key phrase you find through the coverup scheme. When you want to keep something covered, when you don't want people to inquire, you put a label of national security on it and they always talked about Hunt's activities being national security.

Nobody has ever pointed out to one single thing Hunt has ever done that had anything to do with national security. Forging cables surely is not national security. Breaking into a psychiatrist's offices is not national security, as John Ehrlichman can clearly tell you. None of the things described by the special investigation unit were really in the implementation of national security.

What this plan was, right up through June 30, was to coverup, conceal, and to keep it contained. From June 30 on, the plan evolved into much more dramatic terms where John Dean's efforts relative to the FBI, relative to containment by coaching witnesses, relative to really raising big money to pay off the burglars and—

The CHAIRMAN. The gentleman has consumed 3 minutes.

MR. WALDIE. Let me just leave the last line for the next chapter. We will go on to at the next meeting the question of picking up money with gloves on because you don't want fingerprints when you are going to deliver it for a compassionate purpose.

The CHAIRMAN. The gentleman from Iowa has 1 minute and 45 seconds remaining.

MR. MEZVINSKY. Thank you, Mr. Chairman. I will be very brief.

I think what is interesting is that we are having now the layout of the evidence but when we listened to the debate this afternoon, I think a lot of the public may have wondered actually what is going on here. We are supposed to be considering an article on impeachment concerning whether Richard Nixon has prevented, obstructed, and impeded the administration of justice. Somehow it seems that some of

my colleagues have been more concerned about possibly starting a crusade to make of the word "specificity" as common in our conversations as the word Watergate has become.

Mr. MARAZITI. Would the gentleman yield?

Mr. MEZVINSKY. I think it is demeaning really to the President to think that he cannot understand the meaning of what is in this Sarbanes substitute. I think it has been spelled out quite well and I think we understand the tactic as really being diversionary. I just want to say to my colleagues, the evidence that the gentleman from California and others have pointed out is overwhelming. And I also want to say that the evidence will not go away.

Mr. MARAZITI. Would the gentleman yield?

The CHAIRMAN. The gentleman has 10 seconds remaining.

Mr. MEZVINSKY. I shall yield back the balance of my time, Mr. Chairman.

The CHAIRMAN. The gentleman from New Jersey seeking recognition?

Mr. MARAZITI. Yes, Mr. Chairman.

The CHAIRMAN. The gentleman from New Jersey, Mr. Sandman.

Mr. SANDMAN. Mr. Chairman, I have an amendment in the nature of a motion to strike paragraph 1.

The CHAIRMAN. Has the gentleman an amendment at the Clerk's desk?

Mr. SANDMAN. Yes, sir. There are eight amendments, and mine is No. 1.

The CLERK. There is an amendment at the desk, Mr. Chairman.

The CHAIRMAN. The clerk will read the amendment. Has the amendment been distributed?

The CLERK. Mr. Chairman, the amendment has been distributed, I understand, but it did not contain Mr. Sandman's name.

The CHAIRMAN. The clerk will read the amendment.

The CLERK. [reading] :

Amendment by Mr. Sandman.

Strike subparagraph 1 of the Sarbanes substitute.

The CHAIRMAN. The gentleman is recognized for 5 minutes.

Mr. SANDMAN. Mr. Chairman, and Members of the Senate and Members of the House, I hope that we have to carry this on through all of these paragraphs, all nine, but it seems as though this is what we have to do to get some kind of a ruling on the law about which there should be no question.

Now, at the outset, of course, my objections to paragraph 1 is that it is indefinite, as is the preamble in the first paragraph. And it is for this reason, it is not a legitimate Article of Impeachment. I may say at the outset, I had wondered, after I had heard the nine witnesses before our committee on who the prosecutor would use as witness when this measure would ever get to the U.S. Senate, if it ever got there, and tonight I think I found out they apparently intend to use the gentleman from California, and using him as a witness is going to be about as legal as using the evidence that he is trying to make people believe tonight.

Now, back to this particular item. So much as been said about the parallel that the Special Prosecutor has in his job as compared to what we are doing here in our job. Now, this is an amazing set of circum-

stances. The Special Prosecutor is looking into exactly the same case but, of course, his is a little different because crime is being charged there, and impeachment on our score.

But, the Special Prosecutor, with a hand full of people and only a fraction of the time that we have consumed, has been able to produce a theory of the case. The Special Prosecutor, in exactly the same case, has presented exact, precise articles of indictment.

Now, why can we not do the same thing, with 105 employees, of which about half of those are lawyers? Why can we not do the same thing? It would be so easy. Why are we arguing about all of this? Everybody knows it is the only legitimate way to do this. It is a simple way.

Reference to bill of particulars, reference to any other item is not the same as making the original document specific.

A simple parking ticket has to be specific. It has to say what you did that violated the law. It has got to have the license of your car, it has got to have the date that you did it. You want to replace that and say that does not have to apply to the President. Why, this is ridiculous, and this is an altogether new ball game.

You can talk about all of the days and the months that we have been here, and St. Clair has been here, but that changes once you adopt one Article of Impeachment. That is a new ball game, because then it goes to the House of Representatives to decide whether or not a trial should be held in the Senate.

And you know, I think the House of Representatives is entitled to a little bit of information. I think that it is altogether fitting and proper to tell them specifically what you are going to prove. I do not think they should have to listen to their TV all night, and find out the next chapter of Mr. Waldie's summation. I do not think that is the way this case should be tried.

You cannot replace witnesses that you are unwilling to call, you cannot replace him for Mr. Hunt that you did not want the public to hear. This is what the case is all about.

Let us itemize this thing now. The House is going to go into a long debate, 435 people are going to have something to say about this, and they should not have to wait until the same measure gets to the U.S. Senate, when Mr. St. Clair for the first time, according to learned counsel, will have the right to ask for a bill of particulars, the House of Representatives does not have to ask for a bill of particulars, they are entitled to the particulars from the first day one, you know it and I know it and let's do it. That is what we should be talking about now.

Now, I would like to ask counsel this simple question. You have given some pretty good, wide-searching opinions tonight, especially on paragraph 1 where you have given your blanket endorsement to that paragraph, replete with generalities as being sufficient. I will ask you one simple question.

The Special Prosecutor is working on exactly the same case and, in fact, you want his evidence. You want his tapes. Would this be sufficient for the Special Prosecutor? Would it?

Mr. DOAR. If this were, Mr. Sandman, if this were a conspiracy case, a criminal conspiracy case, in addition to the first paragraph there would be a requirement under the criminal law that one overt



act be done by one or more of the coconspirators pursuant to the agreement. But, the essence of a conspiracy case is an agreement. That is the essence of a conspiracy case. And the essence of this case is the President's policy. And the essence of a conspiracy case is something is done in furtherance of the conspiracy.

Mr. SANDMAN. Pardon me. I am not trying to interrupt. I am not interested in the difference between conspiracy. We are both working on the same case. I am talking about being specific. Is the language, according to your opinion, in paragraph 1, which you said is sufficient for this case, is it also sufficient for any kind of a case that the Special Prosecutor would bring?

Mr. DOAR. Yes, I believe it is.

Mr. SANDMAN. Oh, this is sufficient for indictment? His is an indictment.

Mr. DOAR. If one overt——

The CHAIRMAN. The time of the gentleman from New Jersey has expired.

Mr. DOAR. If you allege one overt act.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. I recognize the gentleman from Illinois, Mr. Railsback, for 5 minutes.

Mr. RAILSBACK. Thank you, Mr. Chairman.

Mr. Doar, in response to a question put to you by Congressman Flowers, you indicated that it was the intent of the staff in its report to specifically document, with evidence and with references to the particular subparagraphs of each article. Is that right?

Mr. DOAR. That is correct.

Mr. RAILSBACK. Will that documentary statement be submitted to us for our consideration, to each individual?

Mr. DOAR. Well, that is the judgment of the committee, Congressman.

Mr. RAILSBACK. I take it it is going to go into the report and I take it that we will have a right to either provide separate views or dissenting views or minority views?

Mr. DOAR. I am certain there is no question about that.

The CHAIRMAN. Might the Chair interject that since this is not a matter for counsel to decide, but this is a question of policy that has been pursued by the House of Representatives, every member has a right to submit additional views. The views would not be the views of the staff. The views would be the views of the committee. The committee would report and not the counsel. Counsel would not be writing the report. The report would be written by the committee.

Mr. RAILSBACK. I hope that didn't come out of my time, but I thank you for the explanation.

The CHAIRMAN. The gentleman is recognized for extra time.

Mr. RAILSBACK. Let me just say, Mr. Chairman, that I personally at this point in time think that perhaps it is a good idea to have a motion to strike on each of those counts so that those of us that are concerned about the various allegations have a right to submit our beliefs and our concerns.

And this particular paragraph, which is item one in the Sarbanes substitute and has to do with false and misleading information, happens to be, as everyone knows, one of my major areas of concern.

In drafting your report, it would seem to me that you would want to consider a conversation that took place on March 27, 1973, when the President instructed Ehrlichman to meet with Attorney General Kleindienst and tell him that, Dean was not involved, had no prior knowledge, and that neither Haldeman, Ehrlichman or Colson had prior knowledge, but there was a serious question being raised about Mitchell.

It is my belief that this is the time they were going to set Mitchell up.

On the following day, Ehrlichman telephoned Kleindienst and executed the President's instructions. He relayed the President's assurance that there was no White House involvement in the break-in, but that serious questions were being raised with regard to Mitchell. This happened following the famous March 21 conversation, when John Dean went into some detail to involve Ehrlichman, Haldeman, himself, Magruder and Porter.

Then I think I would go to the series of events that took place in mid-April, which was after John Dean decided to blow the whistle on April 8, followed by Magruder on April 13, followed by LaRue on I think the 14th, when he said the jig was up. And then finally, Silbert called Henry Petersen. Petersen in turn got in touch with Attorney General Kleindienst. Kleindienst in turn got in touch with the President and meetings were arranged between Henry Petersen and the President.

The President met with Henry Petersen on April 16, 1973, from 1:39 to 3:25. At this meeting, the President promised to treat as confidential any information disclosed by Petersen to the President. This was at a time when Kleindienst had decided to recuse himself. In other words, because of his close association with John Mitchell and others, he decided it was not proper for him to lead the Watergate investigation, and this job was assigned to Henry Petersen.

The President emphasized to Petersen that "you are talking only to me, and there is not going to be anybody else on the White House staff. In other words, I am acting counsel and everything else."

The President suggested that the only explanation might be to dig more. When Petersen expressed some reservation about information being disclosed to Moore, the President said "let's just—better keep it with me."

At that meeting, the President, or Petersen supplied the President with a memorandum which he had requested on April 15, the day before, summarizing the existing evidence that implicated Haldeman, Ehrlichman and Strachan. Then there was a telephone conversation later that same day, April 16, and in my opinion, this is even more clear. The President, when talking to Petersen, asked him if there were any new developments that he should know about, and he reassured Petersen, "Of course, anything you tell me, as I think I told you earlier will not be passed on, because I know the rules of the grand jury."

Petersen then recounted to the President the developments of that day on the Watergate investigation.

The following morning, on April 17, the President met with Haldeman, somebody who had been implicated, both by Dean on March 21 and also implicated by Henry Petersen. Early in the meeting, the President relayed Dean's disclosures which had been given to him by Henry Petersen, the Special Prosecutor.

The President also told Haldeman that the money issue was critical. And I quote, "Another thing, if you could get John and yourself," referring to John Ehrlichman, in my opinion, "to sit down and do some hard thinking about what kind of strategy you are going to have with the money, you know what I mean."

The CHAIRMAN. The time of the gentleman from Illinois has expired.

Mr. DENNIS. Mr. Chairman?

Mr. MAYNE. Mr. Chairman?

The CHAIRMAN. The gentleman from Alabama.

Mr. FLOWERS. Mr. Chairman, I would yield my time to the gentleman from Illinois if he needs any more time there.

Mr. RAILSBACK. I appreciate—

The CHAIRMAN. The gentleman from Illinois is recognized—is he yielding 5 minutes?

Mr. FLOWERS. I would yield 3 minutes to the gentleman from Illinois and I want to reserve 2 minutes to ask a question of counsel.

The CHAIRMAN. The gentleman is recognized for 3 minutes.

Mr. RAILSBACK. I thank the gentleman for yielding.

In addition to that particular statement by the President, then there was a sizable—there was some material deleted and then the conversation picked up and it went to Kalmbach and in this particular case the President's own edited transcript shows that the President instructed Haldeman to call Kalmbach to attempt to learn what Dean and Kalmbach were going to say Dean had told Kalmbach regarding the purposes of fund raising.

In addition the President instructed Haldeman, "Well, be sure that Kalmbach is at least aware of this, that LaRue has talked very freely." These statements that involve Henry Petersen were between the President and the man that was really in charge of the Watergate investigation. Then on April—he believed it was 25th and 26th the President instructed Haldeman, a man who had been implicated, a man who had been implicated by John Dean on March 21, to get hold of certain taped conversations that took place in February and in March and Haldeman carried out his responsibilities and reported to the President.

On April 26 he met with the President for 5 hours and reported to the President of the United States about what he had heard on those tapes. This committee has subpoenaed that 5-hour taped conversation and this is one of the tapes that we have not been able to get our hands on.

Then I think it was April 27 the President again met with Henry Petersen. Henry Petersen at this point indicated that Dean's attorneys were threatening to implicate the White House. The President assumed that it meant him as well. And that is when he referred, and this is also in the edited transcript, the President said the only thing he could be referring to is that famous March 21 conversation and he did not tell Henry Petersen that he had had Haldeman listening to the tape. He didn't tell him there was a tape and this was just the day before but what did he do? He told him that they had talked about hush money, \$120,000, and I think that his final quote was that he had turned it off totally.

Mr. Doar, if you want to get into false and misleading statements, I can't think of a better place to begin and I feel so strongly about this particular aspect of the whole Watergate incident that I would just refer your attention to those conversations.

Mr. FLOWERS. Mr. Chairman, in my remaining time I would ask counsel if this is the kind of evidence that counsel would have put under this heading. Is this the kind of evidence that falls into this place in the article?

Mr. DOAR. This is the proof, yes, that we would offer.

Mr. FLOWERS. Do you have any further items that Mr. Railsback has not mentioned?

Mr. DOAR. Well, we have the item that Congressman Waldie mentioned about the President's statement on June 22 following the President's statement by John Mitchell on the 20th of June.

Mr. FLOWERS. To whom was that statement made?

Mr. DOAR. To whom was what statement made?

Mr. FLOWERS. The June 22 statement.

Mr. DOAR. It was made in reply to a question at a press conference.

Mr. FLOWERS. That wouldn't fall under this heading, though, false and misleading statements.

Mr. DOAR. That is true. Excuse me.

Mr. FLOWERS. Well, I ask again are there any further items?

Mr. DOAR. Yes; there is. There is one other statement. That was, well, I believe that this one falls under the next paragraph because this relates to information to the President with respect to a statement that one of his subordinates made to officials of the Department of Justice.

Mr. FLOWERS. Well, the items that Mr. Railsback mentioned and which he centers on, the dealings with Assistant Attorney General Petersen, is it your purpose, then, that these items of information would fall under the first subparagraph there, is that correct?

Mr. DOAR. That is correct. And I would also say, Mr. Congressman, that the statements that were made by Gordon Strachan to the FBI, to the Department of Justice in connection with their investigation, in furtherance of the plan—

Mr. FLOWERS. Mr. Strachan was Mr. Haldeman's assistant.

Mr. DOAR. Yes; would be some of the proof under this paragraph.

Mr. COHEN. Would the gentleman yield?

Mr. FLOWERS. Thank you. I yield to the gentleman from Maine.

Mr. COHEN. Mr. Doar, would the failure to disclose—

The CHAIRMAN. The time of the gentleman from Alabama has expired. I recognize the gentleman from Michigan, Mr. Conyers, for 5 minutes.

Mr. CONYERS. Mr. Chairman, I rise in opposition to this motion to strike and I think we have had a good number of hours here on the debate about whether these pleadings are detailed enough. I think we have examined counsel searchingly. We have exchanged our views. I am going to call for the previous question. I think the time—unless there are other members that feel very strongly about this.

Mr. LOTT. Mr. Chairman?

Mr. MARAZITI. Mr. Chairman?

Mr. CONYERS. I see—well, then, I will withhold the previous question but it seems to me that it is about time for us to consider the first

vote of these proceedings. I don't know how many hours we are going to have to spend to determine whether or not we are going to observe the notice pleading of the Federal rules that have been in existence throughout the country since 1938. Now, if we are going to insist upon drawing an impeachment proceeding based on the last one, from 1868, I think that after we have examined the counsel, we have established facts, we made it very, very definite now that there are two views here and I presume there is nothing left to do but for us to vote this out.

Now, might I inquire, Mr. Chairman, is it possible for us to begin to consider setting some kind of time to close debate to vote on these? I understand there are a number of these motions to strike reaching to some nine of the sections within the Sarbanes substitute and I am very anxious that we resolve this after we have examined it. We have been examining it for several hours.

Mr. RANGEL. Would the gentleman yield?

Mr. CONYERS. Yes, I will yield to my friend from New York.

Mr. RANGEL. I thank the gentleman for yielding because the author of the motion to strike gives me a little problem in that he never directed himself as to whether or not he is saying that the President did not give false and misleading statements. I don't know whether the motion to strike is merely a parliamentary maneuver but if it is a question that the gentleman has as to which authorized officers, employees, of the United States that the President lied to, then we are prepared to tell you the names and the dates of what Federal officials the President lied to. If you are having a problem with the language as to whether it was a Capitol policeman or whether it was someone that worked in the Printing Office, if it is a language problem you have, then I can understand why you raise the motion to strike. But if you are talking about the Attorney General, the Acting Attorney General, if you are talking about anybody that was involved, Silbert's office, if you are talking about grand jury testimony, if you are talking about anything to prevent his close associates from getting indicted, then the President lied, and we can only refer to the President's statements as to what he said. What he said to Mr. Haldeman, to tell him that everybody that Dean said was not involved, he said, say they are not involved. I mean, if they were involved. He said lie and tell them something different. So that if the motion to strike is just to take time, then, of course, I can understand the gentleman from New Jersey's dilemma. It is a bad night. If, on the other hand, if on the other hand the gentleman really wants to find the names of the people that the President lied to, counsel can give you the names and then we can move on to your next motion to strike.

Mr. SANDMAN. I thank the gentleman for yielding.

Mr. RANGEL. It is not my time.

Mr. SANDMAN. Well, whose ever time it is.

Mr. CONYERS. I have the time. I have the time and I would like to say it is very, very clear to us that there are two views. They have been thoroughly debated. Some of us would like to keep our pleadings consistent with the 20th century. Others of us would prefer them for reasons of real or imagined, to keep them back into the Johnson impeachment.

Mr. SANDMAN. Will the gentleman from Michigan yield so I can answer the gentleman from New York?

Mr. CONYERS. Yes, I will be happy to yield to the gentleman.

Mr. SANDMAN. It is going to be very short really. I objected because I had to object because I have never been permitted under the procedures that we are following to get some kind of a ruling as to what the law is here. I submit and it is undisputed to me and I don't care what anybody else says, the thing here is very clear. It should be specific.

Now, you have all this information that you can give to people. Why can't you at least give simple sentences that are concise.

Mr. CONYERS. Well, I am not——

Mr. SANDMAN. And do it right.

Mr. CONYERS. I am not going to yield any further to the gentleman.

Mr. MARAZITI. Mr. Chairman?

Mr. HOGAN. Mr. Chairman?

Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. Don.

Mr. DONOHUE. Order, Mr. Chairman.

The CHAIRMAN. The committee will be in order, and I believe that it is in order at this time to state that the view of one member does not express what is actually the law or the policy of this committee, the House of Representatives.

Mr. WIGGINS. Including the chairman.

The CHAIRMAN. I would hope that the members would recognize that the Chair presides and the Chair is attempting to be fair in recognizing each member and at such time as the Chair recognizes those members, I think that those members should speak out. Until then I would hope that we could keep order and we would be true to the trust that we have and I don't mean to lecture in any way but I think that this is serious enough that indulging in parliamentary maneuvers to delay a decision on this very important question only I think serves to tell the people that we are afraid to meet the issue. And I would hope that we do have as we said we have the courage of our convictions. And to the gentleman from New Jersey directly, Mr. Sandman, I would state that while Mr. Doar may not have expressly stated what the policy is in setting forward specifications I don't believe that the gentleman at this time is prepared to state that he is going to say what the Constitution is when the Constituion for so many years has spoken clearly and the precedents have spoken clearly on the matter of what is established policy. And I think that if we get on with the business of the day and—whereas there have been questions raised as to what the facts are, remain on this side and on the side of the minority who are prepared to speak to the facts. And I think that is what we ought to be doing.

Mr. CONYERS. Mr. Chairman, do I have any time remaining?

The CHAIRMAN. I am prepared to ask what members would like to be recognized on the amendment offered by the gentleman from New Jersey, Mr. Sandman.

It is the Chair's assumption that everyone wants to speak on the amendment.

There are 20 members who seek recognition and the Chair would state that we can and I think with 40 minutes of time which would give 2 minutes to each member, I think if the Chair—the Chair feels that that ought to be sufficient time unless some member is ready to object.

Mr. LATTA. Mr. Chairman?

The CHAIRMAN. Objection?

Mr. DENNIS. The rule is 5 minutes, Mr. Chairman.

The CHAIRMAN. The Chair is prepared to recognize the members for 5 minutes each if that is what they seek to do.

Mr. DENNIS. That is the rule.

The CHAIRMAN. Yes. That is the rule. I will recognize—those members who have spoken, of course, on the motion to strike will not be recognized. They have had their time. I recognize Mr. Wiggins for 5 minutes.

Mr. WIGGINS. Thank you, Mr. Chairman, for recognizing me.

I think it is not inappropriate, Mr. Chairman, and ladies and gentlemen of the committee, to once again put this matter back in focus. We started many hours ago with an agreement that the indictment in this case, the articles, must be sufficiently certain to put the respondent, the President of the United States, on notice of the charges against him so that he could have an opportunity to prepare an adequate defense. This is not a novel notion, Mr. Chairman. The Constitution of the United States requires it. And all members surely agree with that as a correct statement of constitutional law.

Well, faced with that, Mr. Chairman, we started a long time ago to try to decide the question of this matter of policy. You recall that the operative language in article I says that the President made it a matter of his policy. And the question naturally occurred when did that policy come into effect? We debated it—perhaps we are still debating it—for several hours. And I submit, Mr. Chairman, that there is no consensus in this committee now that there is clear and convincing evidence as to when in the world that policy came into effect. It is still an ambiguous confused situation and yet we have passed it.

We now have moved to sub 1. That subparagraph states the following: "Making false or misleading statements to lawfully authorized investigative officers and employees of the United States."

The person allegedly making those statements is the President of the United States.

Now, Mr. Chairman, we can duck the issue now but everybody here knows that if we adopt such imprecise language, that there will come a time when a bill of particulars is demanded and we are going to have to flesh out this allegation with such rather simple questions as what statements are we talking about? In what form were the statements made? Who are the investigating officers and were they acting in their capacity as investigating officers when they received the statements in whatever form we are talking about?

That is a rather important consideration, Mr. Chairman, in view of a recent decision by Judge Gesell, a rather famous trial judge in this city, because in interpreting a section of the Penal Code involving the making of false and misleading statements to lawfully authorized

investigative officers he said they had to be under oath, they had to be transcribed.

Now, that seems to be the rule with respect to everybody else but we know that in this case there are no such transcribed under oath statements by the President of the United States to any official who was then and there acting in an investigative capacity.

Many of these statements are allegedly made to Mr. Petersen but Mr. Petersen told us, and this is his word, that when he talked to the President he was not acting as an investigative official but was reporting to the President of the United States. In due course, if anyone doubts that, I will refer you to the transcript.

But it is possible, Mr. Chairman, that some false statements may have been made. My friend, Mr. Railsback, is concerned that the President did not accurately state his knowledge when he reported the state of Dean's involvement and Haldeman's involvement and Ehrlichman's involvement on the 27th of March.

Well, I want you to listen to a few words in terms of whether or not that conclusion by my friend here is justified.

On the 21st day of March Mr. Dean said this to the President, and you will remember these words, "I honestly believe that no one over here knew," meaning about the Watergate. "I know that as God is my Maker," he said, "I had no knowledge that they were going to do this." And on the 27th day of March, this is what the President said as representative of his knowledge at that time. "I have not really had from Mitchell but I have had from Haldeman, I have had from Ehrlichman, I have had from Colson cold flat denials. I have asked each of you to tell me," and also Dean.

Now, the President, therefore, has not lied on this thing.

The question is did he do so notwithstanding that statement made in confidence by the President on the 27th day of March, the day that disturbs my friend, in confidence at a time when he had no notion at all that those remarks would ever see the light of day?

I am also concerned, Mr. Chairman, about this almost scurrilous charge that the President of the United States lied to the American people, not incidentally to an investigator, lied to the American people as a result of a press conference. This has been characterized by my friend Mr. Waldie in his continuing fable in this case and I don't mean that too derogatory, Jerry. I think you are rather exaggerating as to the facts. But this is what happened on the 22d of June that is the basis of the allegation that the President then and therefore entered into a corrupt conspiracy to obstruct justice.

It was a press conference. It is very short.

The question was asked of the President. This is the question, "Mr. O'Brien has said that the people who bugged his headquarters had a direct link to the White House. Have you any sort of investigation made to determine whether this is true?"

The President said, "Mr. Ziegler and also Mr. Mitchell speaking for the campaign committee"——

The CHAIRMAN. The time of the gentleman from California has expired.

Mr. FROELICH. Mr. Chairman?

The CHAIRMAN. I recognize the gentleman from California, Mr. Waldie.



Mr. WALDIE. Mr. Chairman, I yield 30 seconds to my good friend and my able colleague, Mr. Wiggins, to complete the statement of the President at the press conference.

Mr. WIGGINS. Thank you, Mr. Waldie.

I will pick up with the President's answer: "Mr. Zeigler and also Mr. Mitchell, speaking for the campaign committee, have responded to questions on this,"—meaning the Watergate break-in—"and White House involvement on this in great detail. They have stated my position and have also stated the facts accurately."

That is what bothers my friend. "This kind of activity as Mr. Ziegler has indicated has no place whatever in our electoral process or in our governmental process, and as Mr. Ziegler has stated, the White House has had no involvement whatever in this particular incident."

Well, now, I have completed it but I think I ought to observe that Mr. Liddy and Mr. Hunt—

Mr. WALDIE. How about observing—

Mr. WIGGINS [continuing]. Were not in the White House.

Mr. WALDIE. How about observing that on your time.

The CHAIRMAN. The gentleman from California.

Mr. WALDIE. I want to, Mr. Chairman, continue with my interrupted narrative and not because I—not because I think the points I am making are necessarily the most important points of this case but I think an understanding of the skeleton outlines of the case is necessary.

I have covered June 17, the date of the burglary, through June 30, the resignation of John Mitchell, and now I want to cover July 1 through September 15 which is the summer and early fall of that year, the next phase of the coverup.

During that period of time these events occurred which bear upon the conclusion as to what did the President know and when did he know it and what did he do.

On July 5, 4 days, 5 days after the Attorney—former Attorney General, the campaign manager of the President, Mr. Mitchell had resigned his chairmanship he was interviewed by the Federal Bureau of Investigation and he denied knowledge of any information on the break-in. He later said, well, he had been told a few things but he really didn't believe they were probably true.

We know that isn't so. He knew a great deal and he misrepresented his information to the Federal Bureau of Investigation.

On July 19 and 20 Mr. Porter and Mr. Magruder falsely told FBI agents—these are gentlemen employed by the Committee to Re-Elect the President—that funds that had been paid Liddy, one of the indicted Watergate burglars, who was employed as general counsel by the Committee for Re-Election of the President and had been formerly employed by the White House, involved in the Plumbers group, that the funds paid Mr. Liddy were for legal political intelligence gathering and not for illicit electronic surveillance or surreptitious entry.

He lied when he told the FBI agents that.

On August 10, Mr. Porter perjured himself by lying before the grand jury on the same story.

On August 18 Mr. Magruder testified falsely to the grand jury.

On August 28, Mr. Krogh, who was the head of the Plumbers, this group that was so involved in surreptitious entry throughout the

Nixon administration, testified falsely as to the activities of Mr. Liddy and Mr. Hunt when they were employees of the White House before Watergate.

And on August 29 the President made another misstatement to the Nation when he said that he had had a Dean report which had been a complete investigation of Watergate and there was no White House personnel involved.

In fact, there was no Dean report and there clearly was no investigation because Dean's obligation and assignment was to contain, not to investigate, but to cover, not to disclose. The President knew that. He had never met Dean on August 29 when he told the Nation to lull them into complacency that he was attempting to get to the bottom of this problem. He never told them that he had never met this gentleman that had conducted the so-called report and that in fact he had never received the report because there was no report, never has been, and to this day there is not a Dean report.

Then on September 12, Mr. Magruder testified falsely about the purpose of a meeting with Mitchell, Magruder, Dean and Liddy in which the genesis of the group that broke into the Watergate was first described and political intelligence with surreptitious entry and bugging was discussed.

And then finally on September 15 the first phase was successfully accomplished of containment. They held the risk and the exposure to the five burglars that were arrested on the premises and to Hunt and Liddy. The risk and the exposure was contained and the President on September 15, that very day, met Mr. Dean for the first time and was complimentary to him, complimented him on doing such a good job in containing this risk to just those seven people. It did not get beyond those five burglars and Mr. Hunt and Liddy and that was an enormous accomplishment and the President's language and Mr. Dean's language is instructive. The President said, "Well, you had quite a day today, didn't you? You got Watergate on the way."

The CHAIRMAN. The time of the gentleman has expired. I recognize the gentleman from Illinois, Mr. McClory.

Mr. McCLORY. Thank you, Mr. Chairman.

I think in the context of this article that the paragraph 1 is inadequate. This article is in the nature of a criminal indictment. It in essence is a criminal conspiracy which is being charged under the designation of a "policy." It also, of course, includes the charge of obstruction of justice, another criminal offense, and it should be specific.

From the standpoint of the proposed article II that I expect us to consider later, and relating primarily to the President's obligation, his constitutional responsibility to see to the faithful execution of the laws, it seems to me that such an allegation might take on a different posture and therefore I am going to join in the motion to strike this language in this article, notwithstanding that I may find that this language is appropriate in another article which we may consider.

Now, I would be happy this time to yield the balance of my time to any gentleman who would like me to yield to him.

The gentleman from Indiana, Mr. Dennis.

Mr. DENNIS. Mr. Chairman, I have some time of my own, I think, but I am grateful to my friend from Illinois adding to it.

Mr. Chairman, I would suggest that the distance we are in danger of departing from the law and the Constitution and sending into impeachment politics here this evening is possibly illustrated best by some of the rather startling propositions I have heard advanced during the course of the debate from people who I really don't think ordinarily would have advanced them. For instance, it has been suggested in effect that statements in a committee report can be used to cure an article of impeachment. Which is fatally defective because it is too indefinite and vague. At one point in the debate the statement was made that you didn't really need to worry much about the rules of evidence because they didn't apply in a trial before the U.S. Senate with the Chief Justice presiding.

Then we heard several times in effect that due process of law is outmoded. We are now in the 20th century. You have got notice pleading.

Now, everybody knows that, or I thought everybody knew, that an impeachment proceeding is at least quasi-criminal. I didn't know that was a matter of dispute. It is condone punishment and as Mr. Jenner and I agreed here a while back, rule 7 of the criminal rules still applies and it says, "The indictment"—or "The information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged."

Now, that is not notice pleading. There is nothing outmoded about it. You are entitled, anybody is entitled. I know a little about a few things and one of them is criminal law and you are entitled to be notified of the defense charge, and you are entitled to be notified in the charge. You want some 20th century, up-to-date law. Let me give you a little more.

Whoever commits an action which the law declares to be punishable or which is deserving of punishment according to the fundamental idea of a penal law and the sound perception of the people shall be punished. If no determinant of penal law is directly applicable to the action it shall be punished according to the law, the basic idea which fits it best.

Doesn't that sound a lot like some of the propositions we have heard advanced around here today and it is good 20th century law. It is part of the Nazi penal code from Hitler's Germany.

You know, really, we don't—we didn't have to be arguing this all day and all night. This is a very very simple proposition. All you have to do, not plead 12 books of evidence. You just say making false and misleading statements to lawfully authorized intelligence or investigative officers in that on such and such a day said the following to so and so.

Now, Mr. Railsback has given us a long laundry list. He says I think they are disputable. Mr. Wiggins has disputed a couple of them very well. When the time comes that can be done but why don't we list them? And since we aren't going to list them and since obviously for some reason we have made—better just strike that thing out—

The CHAIRMAN. The time of the gentleman has expired.

Mr. DENNIS. As the gentleman suggests I support the motion.

The CHAIRMAN. The gentleman has 5 more minutes. The gentleman has his own 5 minutes.

Mr. DENNIS. Well, in that case, Mr. Chairman, you almost scared me to death but I am glad to know that I have still got 5 more minutes and I will take a little more time.

You ought to specify, as I was about to say, since we obviously are not going to specify in spite of the great knowledge of these gentlemen, and their stated readiness to specify. If you were going to leave it the way it is, it doesn't say anything, and according to their theory, the operative parts, and up above here, paragraph 2, you do not need it anyway, so out it ought to go. This is a good motion under the circumstances.

Now, Mr. Chairman, I will yield a couple of minutes of my time to the gentleman from California, Mr. Wiggins, and reserve the balance for the moment.

Mr. WIGGINS. I thank my colleague for yielding.

The CHAIRMAN. The gentleman has 4 minutes remaining.

Mr. DENNIS. Thank you, Mr. Chairman.

Mr. WIGGINS. I just want to conclude two points that I did not conclude when I had the time.

The press conference has been criticized as a statement by the President of the United States lying to the American people because he said there was no White House involvement. Now, the only involvement at that time known to the President possibly attributable to the White House was Mr. Hunt. We all understand that Mr. Liddy did not work for the White House and the facts are that Mr. Hunt did not work for the White House either.

Now, I know that there has been some dispute in the evidence as to that, but the weight of the evidence, and if we are going to go by any standard of clear and convincing, the clear and convincing is that he, in fact, worked for the Committee To Re-Elect.

I want to pass from that to one final observation which disturbs my friend from Illinois, and unfortunately he is not here, but he contended that Mr. Ehrlichman lied to the Attorney General about the lack of involvement of Mr. Dean and Mr. Haldeman and himself when he reported to the Attorney General in a telephone conversation on the 28th. I have before me exactly what he said to the Attorney General, and he said it in the presence of the President of the United States. This was what Mr. Ehrlichman said.

OK now, the President said for me to say this to you. The best information he had, and it is that neither Dean, nor Haldeman, nor Colson nor I, nor anybody in the White House had any prior knowledge of the burglary. He said that he's counting on you to provide him with any information to the contrary, if it turns up, and you just contact him direct.

Now, as far as the Committee To Re-Elect is concerned, he said that serious questions are being raised with regard to Mitchell, and he would likewise want you to communicate to him any evidence or inference from evidence on that subject.

Now, the question is, did he lie to Mr. Kleindienst when he said that? You recall what I testified to just a few moments ago when the President said that he had cold, flat denials from these people that they were not involved, and that Dean told him as God as his witness he was not involved. That is precisely the information the President related to Mr. Kleindienst, the Attorney General, and I ask you, did the Presi-

dent lie on that occasion? Did he mislead on that occasion? The answer is he did not.

Mr. COHEN. Would the gentleman yield?

Mr. WIGGINS. I will yield. It is not my time to yield. The time is Mr. Dennis'.

That is all the points I want to make.

Mr. DENNIS. Mr. Chairman, I reserve my time.

The CHAIRMAN. The gentleman will either use his time now, he cannot reserve his time as he has 1 minute remaining.

Mr. COHEN. Would the gentleman yield?

Mr. DENNIS. Well, I will yield Mr. Cohen 30 seconds of my minute.

Mr. COHEN. I thank the gentleman for yielding.

The CHAIRMAN. The gentleman is recognized for 30 seconds.

Mr. COHEN. I would like to address a question to the gentleman from California about the President's statements to Assistant Attorney General Petersen and ask his opinion as to whether or not, having read all of the transcripts and information presented to this committee as to whether or not the President was correctly stating the facts when he told Mr. Petersen to stay away from the Ellsberg matter, the break-in because that was a matter of national security?

Mr. DENNIS. I yield to the gentleman from California.

Mr. WIGGINS. I would say absolutely, yes; without equivocation, that was indeed, a national security matter, and the overwhelming evidence is that this entire operation had national security overtones.

Mr. COHEN. The matter for which Mr. Colson pleaded guilty—

Mr. DENNIS. I have not yielded any more, and I will say that if the gentleman thinks those are fault, write them in here, and we will find out.

Mr. COHEN. The gentleman does.

The CHAIRMAN. The time of the gentleman from Indiana has expired.

The gentleman from Maryland, Mr. Sarbanes, is recognized for 5 minutes.

Mr. SARBANES. Mr. Chairman, I had not intended to speak because the hour is getting late, and I think it is necessary for this committee to move on and begin to consider these amendments. We must not delay inordinately in beginning to reach some resolution of this very grave matter. But some things have been stated that have forced me to try to respond.

I agree with the gentleman from Indiana when he says it is very important not to stray, perhaps in our excitement and concern, from a careful statement of what it is we are trying to express in this matter. I see he has left the room, and I regret that, but I intend to go on and make the points.

Now, the gentleman from Indiana stated that earlier this evening it was said that due process of law was outmoded. No one said that here. The gentlelady from Texas made a very eloquent statement not only for the need for due process, but why it has been met. Why the standards that this committee has followed meet the very highest test of due process.

Second, the gentleman said that it had been stated in the course of the discussion here that a defective article can be cured by a committee report. No one said that. What was said was that the article was not defective, that the article was valid, that this was a good article. In fact, it was stated in response to a question from the gentleman from Maine that the article went further than was necessary in providing additional notices material for the President, and that the report would then supplement the article.

Then it was asserted, it was asserted that someone in the course of this discussion said that the rules of evidence do not apply in the Senate. That was not asserted. What was stated was that in the previous proceedings, the Chief Justice ruled on questions of evidence, that the Senate has the authority to overrule him, and that the Senate does not necessarily have to follow the same, strict rules of evidence that would apply in a court of law. The Senate is sitting in an impeachment trial, and is seeking the truth, seeking to determine what is best for the country.

So, I suggest that none of these sweeping statements were made. And while a debate is important, I think it is critical not to misstate what has come earlier. We can differ, but I think we ought to recognize what has previously been said.

Now, let me address myself to one other point that was made with respect to the President's statement on June 22. In that statement, the President said that he endorsed what John Mitchell had earlier stated, and John Mitchell had earlier stated that there was no involvement either at the Committee To Re-Elect or of anyone else involved. That was Mitchell's statement. The President endorsed the truth of that statement, and that was read, of course, by the gentleman from California.

Now, the gentleman from California also referred to Mr. Hunt and said that Mr. Hunt had no connection with the White House, although it has been so asserted. The fact of the matter is that a very good case can be made that Mr. Hunt indeed still had a continuing connection with the White House. That is in dispute, but look at what happened subsequent to June 17. Hunt's employment records at the White House were falsified in order to indicate, through a memo, that Hunt had left such employment on March 31 and was not still a consultant to the White House on June 17.

Telephone books used in the White House and the Executive Office Building as of immediately after June 17, which contained in them Howard Hunt's name and his telephone number, were immediately recalled, brought back from all offices and that page with Hunt's name and number on it was removed from that book and another page substituted.

Hunt's safe in an office in the Executive Office Building, of which he had made use, was drilled into, and the contents of that safe were removed.

And finally, Hunt was given instructions to leave the country, which were subsequently countermanded, but Hunt was given instructions to leave the country.

Now, all four of these things happened immediately afterward. Now, the gentleman from California can contend that Hunt had no

connection, but I suggest to him that there are facts to the contrary which indicate that Hunt may well have had a connection. And in any event, it seems to me important in that instance, and in the earlier matters, that these things be stated precisely, so that the differences between us are accurately perceived by the people.

Mr. DONOHUE [presiding]. The time of the gentleman from Maryland has expired.

Mr. Hogan.

Mr. HOGAN. Thank you, Mr. Chairman.

I think that while we were on our good behavior yesterday, we are back to the normal procedures that we have been engaged in behind closed doors for the last several weeks, which are to effectively explode the myth that there has been a totally nonpartisan air to all of these hearings. I think that that is unfortunate. I was not aware when we started the televising of these proceedings that we were intending to duplicate the 10 weeks of evidenciary hearings that we had. I do think that we have in many ways done a disservice to ourselves and the American people today. We have members relating narrative that are embellished and filtered through the prism of their own partisan bias, and we have them and others call it evidence. It is not evidence.

Mr. Waldie's narrative, while it might be suitable for a scandal magazine or a speech to his constituents, I think it is totally inappropriate here. His statements have had inaccuracies, embellishments, frivolities, irrelevancies, and allegations that have not been substantiated by the evidence.

We should address ourselves in these proceedings, it seems to me, to the factual evidence which is supportive of the articles of impeachment which we are debating. We do not need humor. Our role is not here to entertain the American people, but to address ourselves to the constitutional responsibilities we were so awed with.

Now, I oppose the motion to strike, and we have been belaboring the same point so many times over and over where Mr. Wiggins continues to call what we are about an indictment. It is not an indictment. We are not involved in a criminal procedure, and we should recognize that and stop deluding ourselves.

I am disappointed in some of my colleagues. When Mr. Waldie talks about Mitchell lied, and Krogh, and Magruder, and Porter perjured themselves, they are not the subjects of this impeachment. When he says the President knew full well that White House people were involved before a certain point in time is not supported in the record.

When Congressman Drinan says that Stans was interviewed in his office and not before the grand jury, and he called this a compromising procedure, that is not the case. And the Justice Department and Mr. Stans are not the subject of this impeachment.

It is not even unique or unusual for people of prominence to be interviewed outside the grand jury, and I remind the gentleman from Massachusetts that another distinguished gentleman, whom I revere, from his home State, former Speaker John McCormack, was not required to go before the grand jury when the investigation and prosecution of his own staff aides was involved. He testified—

Mr. DRINAN. Would the gentleman yield?

Mr. HOGAN. He testified before the Department of Justice, as Mr. Stans did.

Mr. DRINAN. Would the gentleman yield?

Mr. HOGAN. I will not yield at this point.

And my good friend and colleague from Maryland, while he is generally very calm and dispassionate, and logical, I think has done an outstanding job today in defending his substitute, even he has fallen into this trap. We all feel so strongly about these things, that we have a hard time keeping our natural propensities in check. He was reading from the transcript where he made a parenthetical remark, where he got to the point where the President says to Dean, "Well, you had quite a day, didn't you, you got a Watergate on the way, huh?" And then he says, then Dean says. "Quite a 3 months."

Then he made a parenthetical remark and said that incidentally, that was not in the White House transcript. And the implication of that is that there was a deception on the part of the White House in leaving that part of the statement out.

During the interim of the recess, I had checked what Mr. Jaworski's transcript, Special Prosecutor said, and for Dean's statement there, they have "[Inaudible] 3 months." which is not what we have in ours.

The next sentence, we have "How did it all end up?" and Mr. Jaworski's transcript says "How did this all end up?"

Now, these are all inconsequential, but when you give the implication that the White House, without any substantiated proof, has tried to fabricate the transcripts, when we ourselves have transcripts that are not the same as Mr. Jaworski's or the White House, I think we are just confusing the issue for ourselves and the American people. I hope that when we return tomorrow we will all try to rediscipline ourselves and focus in on the articles themselves which are under debate, and not try to propagandize this, because I think by doing so we are doing a disservice to these proceedings.

And now I will yield to the gentleman from Massachusetts.

Mr. DRINAN. Thank you very much for yielding.

In early August 1972, the President himself asked Mr. Ehrlichman to arrange that Mr. Stans not be compelled to go before the grand jury. What I said about Mr. Stans is totally relevant to this inquiry because it was the President of the United States himself who asked that Mr. Stans be given this unusual situation, and I yield back to Mr. Hogan.

Thank you.

Mr. HOGAN. The point that I am trying to make—and I would again remind the gentleman from Massachusetts that there is nothing unique or unusual about that; it is totally proper for a man of Mr. Stans' prominence, and the position he played at that time to testify under oath as he did, in the offices of the Department of Justice. He was put under oath, and there is not anything more improper about that than there was for exactly the same procedure which was done for former Speaker McCormack of the gentleman's State.

And I yield to the gentleman from Mississippi.

Mr. LOTT. One brief point and I appreciate the gentleman yielding.

Since we are going to talk about the facts, I would like to make this one point before we go any further. I think Mr. Flowers brought it up and it has been passed over. All of us have been speaking to this



press conference of the 22d, talking about the President's public statements. Mr. Wiggins spoke to it, Mr. Sarbanes. I think the important point is that this first section says making false and misleading statements to lawfully authorized investigative offices and employees of the United States. I think Mr. Doar said that this particular date and statement would not be applicable to that section. Is that correct, Mr. Doar?

Mr. DOAR. Yes, that is correct.

Mr. LOTT. So, the point is that the very first argument made in support of this section, in fact, is not applicable.

Thank you for yielding.

The CHAIRMAN. The time of the gentleman from Maryland has expired.

I recognize the gentleman from California, Mr. Danielson, for 5 minutes.

Mr. DANIELSON. Thank you, Mr. Chairman.

We have been rearguing evidence and facts all day and the evidence closed on Wednesday of last week. I suggest that we get back to discussing the pleadings.

No. 2, I wish to make it clear in the record that I do not concur with the opinion of my colleague from California, Mr. Wiggins, on constitutional law as applies to impeachment proceedings.

I yield to my colleague from California, Mr. Edwards.

Mr. EDWARDS. I thank the gentleman for yielding, and I will not take long.

This is a very simple section, making false and misleading statements to lawfully authorized investigative officers and employees of the United States. The gentleman from Illinois, Mr. Railsback, has provided us definite information, time, chapter, and verse, and in depth, some very definite testimony about where the President made the false statements to a lawfully authorized investigative officer, the head of the Criminal Division of the Department of Justice, Mr. Petersen. And in addition to that, false statements made by the President to Attorney General Kleindienst.

Mr. Wiggins says this does not count because Judge Gesell made some sort of a ruling the other day in a criminal proceedings and I am sure Mr. Wiggins really did not mean that to apply to this case. We are certainly not dealing in a criminal proceeding.

I really do not know what more, Mr. Chairman, we are supposed to do in this modest section. It seems to me that we have provided the information, the evidence, to comply with it, and I think we ought to move along.

Mr. DANIELSON. I submit that we should get on with the work which is cut out for us, to vote on some articles of impeachment. I submit that we should quit setting of straw men and knocking them down and I yield back to the Chair the balance of my time.

The CHAIRMAN. I recognize the gentleman from Maine, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman. I didn't really realize that I was seeking recognition, but I am glad to accept it.

I would certainly like to follow up on a point just made by the gentleman from California, Mr. Edwards, in terms of what the duty of the President of the United States is and what the nature of these

proceedings are, because we have heard this time after time all day long placed in the category of a criminal proceeding.

It seems to me last evening, yesterday, we talked many hours very eloquently, very eloquently, about the sacred obligation of our position, the sacred trust that each and every one of us hold and the sacred trust that the President holds and whenever we talk about that position of trust I am always reminded about the magnificent words of Justice Cardozo when he talked about the duty of trustees and the duty of fiduciaries being something higher than the morals of a marketplace; "the punctilio of honor the most sensitive," and that is the standard we should be looking at here, the punctilio of honor the most sensitive. So, it seems to me rather incredulous when I hear some of my colleagues suggest that only if the President raises his hand and swears on the Bible before a court should he be held to a standard of misleading investigators or the American public only then, after he has sworn to the Bible under oath before a formal proceeding. I think we demand much, much more than that from our elected leaders.

I yield back the balance of my time.

The CHAIRMAN. The gentleman from Virginia, Mr. Butler, sought recognition.

Mr. COHEN. I yield to Mr. Butler if I have any time remaining.

The CHAIRMAN. The gentleman has time on his own.

Mr. Butler.

Mr. BUTLER. Mr. Chairman, when you asked that question, I was just seeking to protect my right to speak and so I have nothing further to contribute except that I would yield to the gentleman from Salt Lake City.

Mr. OWENS. Thank you.

The CHAIRMAN. The gentleman from Utah, Mr. Owens, is recognized.

Mr. OWENS. I thank the gentleman from Roanoke.

I did seek the opportunity to ask one question of my colleague and seatmate here in reference to the conversation that we were having as regards the President's request of Mr. Ehrlichman to see that Mr. Stans was not interviewed before the grand jury, but was interviewed outside, and that the exchange the colloquy that he had with the gentleman from Massachusetts, while it is true that Mr. Petersen testified before this committee that it is not unusual and not ordinarily improper to make such a request for a so-called very important person, in this case, after Mr. Dean and Mr. Ehrlichman had contacted Mr. Petersen, and Mr. Petersen refused to make that exception for Mr. Stans, Ehrlichman called Mr. Kleindienst, and bear in mind that all of this was done on the direction of the President.

Mr. Ehrlichman then called Mr. Kleindienst, the Attorney General, and, according to Mr. Kleindienst, he told Ehrlichman that he, Mr. Ehrlichman, was very lucky that Petersen had not made an obstruction of justice complaint. And so, in this circumstance, you have a situation where, pursuant to the President's instruction, you have the Attorney General saying to Mr. Ehrlichman that he had done something improper, obviously, and that he had come very close to being charged with an obstruction of justice complaint.

Now, something strange happened after that, the details of which are not in evidence before the committee, because ultimately, in fact, Mr. Stans was interviewed outside the grand jury.

But, this I think lends some weight to the charge that perhaps pursuant to the President's direction there was improper activity on the part of his two chief lieutenants acting in this area, Mr. Ehrlichman and Mr. Dean, at least according to the administration's own Attorney General.

Mr. DRINAN. Would the gentleman yield?

Mr. HOGAN. What was the question?

Mr. OWENS. That was a rebuttal.

The CHAIRMAN. The time of the gentleman from Virginia has expired.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. The gentleman from New York, Mr. Rangel, is recognized for 5 minutes.

Mr. RANGEL. I yield 1 second to the good Father.

Mr. DRINAN. Just to complete this colloquy, I think it should be noted that Mr. Petersen himself speaks this way and I quote from the hearings of his conversation to this committee:

I think it is fair to say that the first concession was made concerning Mr. Stans, and that the decision was made by Mr. Kleindienst after a call to me from Mr. Ehrlichman which got rather heated.

Thank you for yielding.

Mr. RANGEL. Thank you, Father.

Mr. Chairman, it is pretty clear to me that Mr. Sandman has pretty much made up his mind as relates to articles of impeachment. But, I do deem it a little unfair to use parliamentary procedure when in fact his motion to strike deals with each and every article that is outlined in article I of our impeachment articles. It seems to me that he has made an admission to this committee that he was moving to strike paragraph 1 of the Sarbanes substitute not because he did not believe that the President had made false or misleading statements to lawfully authorized investigative officers, but because it was his personal belief that this type of information should be included in the articles of impeachment.

Well, if Mr. Sandman is going to take this route because of his personal belief as to how the articles should be drafted, he has at the desk nine amendments. If the Chair continues to be as generous in his rulings to give 5 minutes to each member to discuss these blanket motions to strike, as suggested by Mr. Sandman, then it would have consumed 27 hours of this committee's time to deal merely with Mr. Sandman's parliamentary requests.

There are more than enough people ready to deal with some of the problems we have with the President. It is difficult to think in all of the criminal terms suggested by Mr. Dennis, because Mr. Dennis would forget the fact that the President is an unindicted coconspirator. If you want to deal with the criminal law, there is plenty of opportunity to deal with that. Unfortunately, in our Constitution the burden falls on us because the President cannot be indicted. If indeed the writers of the Constitution wanted to use the criminal law they would

not have given the President that protection as to not being indicted.

It is a little surprising, however, where the President says that the Watergate grand jury has all of the information that it needs to indict the guilty and exonerate the innocent and then when it comes close to it Mr. St. Clair says that they did not have enough evidence. Nevertheless, if you really want to deal with the false and misleading statements, then I ask my colleague from Maryland why don't you walk with me through the President's steps, walk with me using his language as he went to bed the night of March 21 and talked to himself on a dictaphone. And this was March 21, 1973. You do not have to pick these things at random, they are all over, and then on March 27 the words that he says to Ehrlichman as to what to tell the Attorney General.

It is false, misleading and expletive deleted.

Now, what did the President say to himself? The President dictated his recollections of the day. He said Magruder will bring Haldeman down. This is the language that he heard from Dean. If Hunt was not paid, he would say things that would be very detrimental to Colson and Ehrlichman, that Mitchell had been present when Liddy offered his political intelligence proposal, that Colson, with Hunt and Liddy was in his office. That he had called up Magruder, that Colson had pushed too hard, that Ehrlichman sent Hunt and his crew out to check into Ellsberg's psychiatric problem and that Krogh was in a straight position of perjury.

This is not what he is saying is true, this is what he is saying that Dean told him and Strachan had been a courageous fellow through all of this and Strachan certainly had knowledge of the matter and that he was going to call Mitchell.

Now, he calls Mitchell and of course that's when they talk about stonewalling it.

Now, I just want to say with all of this information, with Dean talking about the cancer and no one takes issue with the fact that the President is talking, and we heard the conversation, and I will yield if I have time, but what bothers me is March 27 where the President is talking to Mr. Haldeman and he wants to get all of the information that he can from the grand jury. And he tells Mr. Haldeman to ask Kleindienst, he said put it on the basis it's John Mitchell that wants the information from the grand jury, and so everyone can't say it's the White House raised hell about it because we are not raising hell, just tell him that he owes it to Mitchell. And here's the last part and I will yield.

He says "I think you have got to tell them. Look, Dick," and that's Dick Kleindienst, "let me tell you, Dean was not involved."

Well, the President says on March 21 to himself that Dean had confessed.

Mr. SARBANES. Would the gentleman yield?

Mr. RANGEL. Wait a minute now. The President said and it is the President's words, that Dean felt he was criminally liable for his action in taking care of the defendants.

March 21, Nixon talking to Nixon.

March 27, Nixon talking to Ehrlichman.

The CHAIRMAN. The time of the gentleman has expired.

Mr. RANGEL. He said "Tell them to look, Dick, Dean was not involved."

Now this is not taking anything out of context, and then the President goes on to say "Tell Kleindienst that nobody in the White House was involved."

Mr. HOGAN. I ask unanimous consent that the gentleman be given another 30 seconds so he can yield 15 of it to me.

The CHAIRMAN. Without objection, it is so ordered.

Mr. HOGAN. Would the gentleman yield?

Mr. RANGEL. I yield.

Mr. HOGAN. The gentleman misunderstood my criticism. If it is criticism, I would be happy to walk hand by hand with him through the evidence and pluck out the things that are germane to our articles of impeachment. But, I think we should reject those that are not. That was the only point I was trying to make.

Mr. RANGEL. Would the gentleman agree that the gentleman from New Jersey—

Mr. HOGAN. I only have used 10 seconds of the 15.

Mr. RANGEL [continuing]. Is not concerned with the fact you and I agree the American people should know?

Mr. HOGAN. I will let the gentleman from New Jersey speak for himself. But, I accord the commendatory things about Strachan. In fact, I was responsible for putting into the Sarbanes substitute the language about rewarding those who have committed perjury. Giving a \$36,000 job to Magruder after he was known to have committed perjury is even more damaging and I want all of those things to be brought out and specified, but I also think we should reject the things that are not germane.

The CHAIRMAN. The time has expired.

Mr. MAYNE. Mr. Chairman?

The CHAIRMAN. Mr. Mayne is recognized.

Mr. MAYNE. I thank the chairman for yielding and I want to thank him also for his patience tonight and to assure the chairman that I am not trying to delay these proceedings but I ask for this time because I am very genuinely concerned whether the person charged here with very serious offenses, who happens to be the President of the United States, is really given adequate and fair notice of the nature of this charge.

It has been stated a number of times in this particular subparagraph, it is that either personally or through subordinates and agents he has made false and misleading statements to authorized investigative officers and employees of the United States.

Now, Mr. Railsback, my good friend from Illinois, has rattled off a great many instances which he believes would come within this category. And the gentleman from New York, Mr. Rangel, has said such instances are all over the place. But, it seems to me that that is the very point, that the President and his attorneys should not have to look all over the place in preparing their defense. I cannot see how it can be of any possible prejudice to the House of Representatives in an impeachment proceeding to set out fairly and specifically when these instances occurred. If the gentleman from Illinois is correct in

his recital, and I believe Mr. Doar indicated that he thought that he was, it would seem to me that no harm could possibly be done by setting those out.

There are, after all, many, many authorized investigative officers. I think that the FBI agents and I believe Mr. Doar mentioned that there were some FBI agents to whom such statements are alleged to have been made, certainly it would be no great task or unreasonable burden for the staff, in preparing these articles, to set out the names of those agents so that the defendants would not have to sift through every single interview with every agent that took place.

And the point has already been made that there are even more employees of the United States than there are authorized investigative officers.

The President happens to have a number of agents and subordinates. Many statements have been made which some of my colleagues here tonight feel were false and misleading. But, if only particular statements are those on which you rely, I fail to see how it would not be proper, why it would not be required by fair play and due process to set these matters out in detail in these articles so that the American people, as well as the President and his attorneys, will know just what it is that they are up against.

And I would like to ask Mr. Doar, if I may, Mr. Chairman, what harm would come from setting out in subparagraph 1, I believe it is at least the one that is the subject matter of this motion, what harm would it do to the impeachment case for you to set out the names of the agents and subordinates of the President, the specific occasions on which you allege that he made these misleading statements and to whom he made them. Why should there be any mystery about it?

Why should there be any speculation or guesswork about it?

Why would this prejudice the House of Representatives?

It does seem to me that it very definitely will prejudice the President, that he should not just have to rely on some—I apologize, I do not wish to say offhand statements by the gentleman from Illinois, because it was obviously carefully prepared, but given in a necessarily very hurried manner, isn't this a matter of enough importance so that you should prepare it specifically and in a manner that the defense and the American people can fully understand?

MR. DOAR. Well, I think in order to answer that you have to admit that you have to balance. On the one hand you have to give the President clear notice. On the other hand, you have to move along and avoid dilatory tactics.

And, it seems to me that experience has shown throughout the last 200 years of our country that the way to fairly present these matters is to present in the pleadings short, concise, simple statement of the ultimate facts that you base your articles on and then give to the person charged full opportunity in the pretrial, in the discovery stage, to learn all the facts about the case, that if you get arguing about the pleadings, the paper, experience has shown that you run into a considerable amount of delay and dilatory arguments that are really—really, experience has shown in the judicial process is unnecessary.

So that you can't—I really think, Mr. Congressman, that to get this all out in a pleading, in an article, would cause harm, not—not in the

sense of depriving the President of knowing every single thing that he is entitled to know, the nature of the charges, but rather that it will just build and build and feed and fester into more and more delay of ultimately getting to have this case finally decided one way or the other.

Mr. MAYNE. Well, I assure the gentleman I share the concern—

The CHAIRMAN. The time—

Mr. MAYNE [continuing]. About delay, but I am afraid we are inviting and causing delay by the filing of a bill of particulars if this statement is not sufficient.

The CHAIRMAN. The time has expired.

The gentleman from Wisconsin, Mr. Froehlich.

Mr. FROEHLICH. Thank you, Mr. Chairman.

Wiley, do you need more time?

Mr. MAYNE. No. I thank the gentleman.

Mr. FROEHLICH. Thank you, Mr. Chairman.

I think that what we are going through here today is—I recall the statement I believe the Vice President made. Impeachment is what this committee says it is or what the House says it is.

Many people have disputed that, including some members of this committee. We started out in this process, as was pointed out. We could not, as a committee, come to a conclusion as to what was an impeachable offense by definition. We never decided by a committee of proof, the burden of proof should be for us, whether it should be clear and convincing as many of us agreed to, or whether it should be beyond a reasonable doubt as some of the individuals thought. We never settled that.

And, so now we are here before—we finally got the articles, the proposed articles before us, and why have we spent this whole day arguing over the articles? Because they were not specific, because many of the individuals on this committee did not know what the proposers of this article were going to use to back it up. And so we have argued for a full day.

Now, had the committee staff, which I understand is physically and emotionally drained, had the staff had the time to properly sit down and prepare the details, they could have backed up with a statement the specifics for each one of these subparagraphs. We could have made a decision as a committee whether they should have been included or not included.

But, you see, we are here with an article presented when the debate started on Wednesday night, and we have been going for the television cameras morning, afternoon, and evening ever since.

The staff people have been going, the committee has been going. There has not been time to detail the specifics of these charges, either in the charges or in supplementary material. And we can't stop to take the time.

We told the American people the importance, the awesomeness of this task and now we are under the gun. We can't stop and take the time to write the specifics to everyone's satisfaction—not everyone on this committee is going to agree, but it seems to me that we needed to take the time to put these specifics in detail behind each one of these articles, to at least the satisfaction of the staff and the people proposing

the articles, so then we could say then based upon this information, "Yes; I will vote for it" or "No; I will not."

But, you asking the committee members to really buy a pig in a poke. Many of us have tended to lean toward an article of impeachment, and obstruction of justice. We think it needs to be spelled out.

Now, the motion from the gentleman from New Jersey is not dilatory. It is not made to delay. It is made to explain to the American people the specifics behind each one of these subparagraphs. And, in talking to the gentleman from Alabama, he said we need this, to me earlier this evening, and I think we need it and the American people need it.

Now, the best way to get it is not to spend another day fighting over the next eight articles or asking staff to explain the next eight articles, or trying to explain them, shooting from our hip, but it is to take the time and 1 day or 2 days after 8 months is not going to make the difference. It seems to me we need to take the time to give the staff the opportunity to work with the proposers to detail the specific items behind the charges and then we can sit down and say, "yes" or "no."

Mr. FLOWERS. Would my friend yield, my friend from Wisconsin yield?

Mr. FROEHLICH. Yes; I yield.

Mr. FLOWERS. I think he has made an excellent statement. I did talk to him earlier and I think it is highly important that we proceed in some manner to elicit the specific facts that go with the specific charges. And I think this is one process of doing it, a motion to strike a specific section of it, and then discuss it in detail. For I would certainly agree that although it might be per se dilatory, it is also per se very helpful in adducing the evidence that stands with each one of the charges again I appreciate the gentleman yielding, and I appreciate his statement.

Mr. FROEHLICH. We started, Mr. Chairman, at 11 o'clock this morning. The most important vote the members of this committee will ever cast in their life is a vote for impeachment, and we are dragging through 12 hours today, more than that yesterday, months of this, and to take some time to think, we are not allowed to. We have to rush forward, we have got to have this on the floor. I think that is a mistake, Mr. Chairman.

The CHAIRMAN. The time of the gentleman has expired.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. The gentleman from Ohio, Mr. Seiberling, is recognized for 5 minutes.

Mr. SEIBERLING. Thank you, Mr. Chairman.

I will try not to take 5 minutes.

I think the gentleman from Wisconsin has made a constructive suggestion, if I understand it correctly. As I understand it, you are not demanding that the articles necessarily spell out all of the specific details, but that we have before us, in considering the subparagraphs, the evidentiary facts outlined in some way, so that we can see what the staff thinks are the things, at least some of the things that they feel support them. Is that correct?

Mr. FROEHLICH. Yes. Yes; if the gentleman will yield.



Mr. SEIBERLING. I think that is a very excellent suggestion. I would like to comment on one other matter. I think that these 11 hours, 12 hours, have not been wasted. I think if we can arrive at some consensus as to how to proceed along the lines like this, we are not wasting our time. I do feel that time is very pressing. The country has grave problems which are being impeded, the handling of which are being impeded by the uncertainty caused by the impeachment situation and we must—we owe it to the country to move ahead.

I would also just like to make one other comment and then I am going to yield to the gentleman from Missouri, and that is that we would—we could have spent days and days wrangling over the specifics of a very detailed article of impeachment here, much more than we have been discussing the principles of what should be the article of impeachment, and I think that the staff and the people have really approached it in the right way and can give proper notice to the President.

I yield to the gentleman from Missouri.

Mr. HUNGATE. I thank the gentleman for yielding, and I was interested in the remarks of the gentleman from Iowa, Mr. Mayne, who is an experienced trial attorney. I would inquire of him if we are not facing the problem of where we have a pleading drawn that somebody was hit on such and such a day and such and such a street, and he is hurt, and you file a motion to make it more definite and certain, and the man comes in and says, well, his head and his scalp were contused and abused and his ears and eyes and then he tells so much that you don't know any more when you get done than you did when you started.

I am sure the gentleman has had that sort of experience in the trial practice and is not what we are doing trying to strike some middle ground on this?

Mr. MAYNE. May I—

Mr. SEIBERLING. If I may say—

Mr. HUNGATE. I yield to the gentleman from Iowa his time.

Mr. SEIBERLING. May I say I received a telegram tonight from a prominent businessman in Green Bay, Wis., which I believe is the gentleman's District, saying that he thinks that this proceeding is going in a very, very fine way, and I think the gentleman from Wisconsin has helped to contribute to that.

I yield—who was it—

Mr. HUNGATE. I want to yield to the gentleman from Iowa, if you would please, Mr. Mayne.

Mr. MAYNE. Well, it would be my experience, if the gentleman from Missouri, that we would at least name the date and the nature of a misstatement, not in an accident case, which this is not, but in a case involving misstatements or alleged fraud or anything involving dishonesty, as the thrust of this subparagraph.

Mr. SEIBERLING. If the gentleman—

Mr. MAYNE. I think it would be defective.

Mr. SEIBERLING. I would like to yield to the gentleman from Illinois. Mr. Railsback, if the gentleman from Iowa is completed.

Mr. MAYNE. I am completed.

Mr. RAILSBACK. I want to thank the gentleman for yielding, and very briefly just say I was impressed also with the statement of Mr. Froehlich and that if we are going to be prepared to present a bill of particulars to the body, for the life of me I wonder why we can't have our own bill of particulars to take to the House whether we call it a bill of particulars, or if we call it some kind of supporting evidence, but many of us feel we do need something. Perhaps it should be in the nature of a bill of particulars.

Mr. SEIBERLING. Well, as long as it is tentative, because new evidence may well be discovered before we get to the point of a trial in the Senate.

Mr. RAILSBACK. It could be tentative, but I think it would help our colleagues and I really think it would help us.

The CHAIRMAN. The time of the gentleman has expired.

I recognize the gentleman from California, Mr. Moorhead.

Mr. MOORHEAD. Yes, Mr. Chairman.

The struggle against reason and reality insofar as making the charges specific is something that I can't understand from the explanations that have been given, because if it is possible to make up a bill of particulars and that will delay the proceeding, I can't understand how it would delay the proceeding to put it into the pleadings.

One thing that I think is most important, that is that the members of the committee, when they vote on each one of the charges, be able to see the thing that backs up that particular charge that is made against the President, and from that evidence and from those particulars to reason with themselves as to whether they want to make that a charge for removing the President of the United States from his Office.

I think that we have to consider that on each one of these things that comes up.

I am sure that from the debate that has taken place here tonight, largely between the two gentlemen from California, Mr. Waldie and Mr. Wiggins, it must be apparent that the facts are confusing, that if you want to take a particular point of view or the other, you can prove almost anything, especially if you are willing to take hearsay evidence and some of the irrelevant evidence that has been offered here before this committee.

It is important that the evidence that is to back up any charge must be strong and persuasive and of a kind that is admissible in court, and we as a member—members of this committee have the right to see to it that the specifics that are available are sufficient to support any charge that had been made.

One thing that has come up continually, and I think I ought to comment on it, and that is concerning Mr. Dean's position as having been ordered or not ordered by the President to make an investigation. There is no question but what in the White House was the person that all the members of the White House staff looked to for information and took their information concerning anything connected with Watergate. Mr. Colson testified to that in testifying before the committee here a few days ago. It can't be any surprise either to the members of this committee to know that the President felt that Mr. Dean had a mission in going up to Camp David and preparing a re-

port, because in the tape that we heard that was presented to us by the committee, the President may not have ordered Dean to make a report when he was at Camp David, but he suggested to him that if he went to Camp David, it might be a good opportunity for him to think about a report that he might take back to the President.

We are arguing with semantics, when we try to make that a major issue in this impeachment hearing.

One last comment that I would like to make and that is in connection with all of the evidence that we have had, the things that we have heard. A few good rifle shots and a good solid target would be a lot more effective than the shotgun blast at thin air that we have had in these hearings.

Mr. DENNIS. Will the gentleman yield?

Mr. MOORHEAD. I yield to the gentleman from Indiana.

Mr. DENNIS. I suggest perhaps to my friend from California that one of the reasons there is such an unwillingness to be specific may be that some of the specifics that they would rely on if they had pled them just wouldn't pan out as true.

Mr. Wiggins has already mentioned this. But one of the points that has been suggested here is that on March 22, the President instructed Ehrlichman to tell Attorney General Kleindienst that Dean was not involved and that that is false.

Here is what he said. He said, "Look, Dick"—this is what he is saying to Ehrlichman, but I should say to Kleindienst, "Let me tell you, Dean was not involved, had no prior knowledge."

Now they are talking about prior knowledge of the Watergate break-in, and there is no hard evidence that Dean had prior knowledge of the Watergate break-in. They are not talking about the cover-up, and that is proved when you go over further and read what Ehrlichman actually did tell Kleindienst. He said:

The President said for me to say this to you, that the best information he had and has is that neither Dean nor I nor anybody in the White House had any prior knowledge of this burglary.

Now, that is all they are talking about, and it is a very, very thin suggestion that there is anything false in that.

Mr. RANGEL. Would the gentleman yield?

Mr. DENNIS. It isn't false by the weight of the evidence.

Mr. RANGEL. Would the gentleman yield? I think we can have a pleading—

Mr. DENNIS. I yield back to my friend.

The CHAIRMAN. The time of the gentleman from California has expired.

The gentleman from New Jersey, Mr. Maraziti.

Mr. MARAZITI. I thank you, Mr. Chairman, for recognizing me and for your patience in the proceedings tonight.

I support the motion to strike this section. We heard the statement made today that we don't want to strangle the pleadings with the facts, and I certainly agree with that statement. But I think, Mr. Chairman, that we ought to, at this time, make a very technical distinction that we as lawyers understand between evidence and fact on the one hand, proof, and allegations on the other hand. We are not

talking here about proof, evidence, facts. We are talking about allegations.

Now, what is an allegation?

It is simply a precise statement of the charge. The evidence and the facts constitute the proof. Now, we are not asking for the inclusion of the evidence, the facts. We certainly don't want that in a pleading. But you want the allegations, very simply as has been stated here by many members—the time, the place, and in this particular instance, the statements that were alleged to have been made.

This is very simple. What statements were alleged to have been made, and to whom, and where?

Now, the recitation here in this hearing tonight, in this room tonight, is not the answer. The recitation of facts, or alleged facts, and I must say in many instances opinion by the gentleman from California, Mr. Waldie, which recitation is replete with conclusions of his own, is certainly not the answer. The allegations should be included in the articles of impeachment. We are not seeking an explanation of the allegations orally. It must be in the articles of impeachment for two reasons, so that we know what we are voting on, and so that the respondent knows what he must answer.

Now, some reference has been made to the committee report. Now, this has been referred to by the chairman, and by Mr. Doar, but the committee report, the report that is to be written, is not the answer. The report is not a part of the articles of impeachment.

Now, if Mr. Doar is going to get the allegations, and the facts, and other matters that he wants to put in the report, that is fine. But, let's have the allegations now as the gentleman from Wisconsin has suggested. Let's have them when they are ready. Whatever time it takes, we should take. And certainly it is only a matter of a day or two. And then we can vote on the articles with the allegations, and Mr. Doar and the staff and the members can work on and put in the report whatever is to be put into the report.

Now, the gentlewoman from Texas in regard to an analysis of due process has said that due process has been given to the President in the proceedings that we have had here during the last months. Some will dispute this allegation, but nevertheless, let's assume that that was the case.

But, are we going to stop, are we going to stop due process at this point, the most crucial point when we are drafting and voting on the articles of impeachment?

Mr. Chairman, I submit to you that due process at this point of our proceedings requires that the articles of impeachment contain the specific allegations. Mr. Chairman, therefore, I say to you that in the absence of the specific allegations, in this section that we are dealing with, I have no alternative but to vote support of the motion of the gentleman from New Jersey, Mr. Sandman.

Thank you, Mr. Chairman.

The CHAIRMAN. I recognize the gentleman from Mississippi, whom I overlooked, Mr. Lott.

Mr. LOTT. Thank you, Mr. Chairman. I know the hour is late, and I will be brief.

I would like to associate myself with the remarks of Mr. Mayne, and also speak briefly in support of the motion to strike by Mr. Sandman.

I think that he probably did not intend necessarily to offer motions to strike on each amendment, but I think it has been clearly demonstrated here by what has been said, that we do have a need to see what the specifics are so that we can debate and agree, if possible, on what specifics will be included in the articles.

Now, we have already pointed out earlier that there was a mistake on the first allegation in support of this section. And I have another one that I could speak to with regard to the President's giving false and misleading statements to Petersen on March 21, but I think enough has been said about this.

I think now that the point has been made very clearly by the last few speakers, on both sides of the aisle, that we do need to find some way to come up with the particulars and I urge the committee to go ahead and get on with their vote on the motion to strike and make some determination as to what we can do or some way that we can find to be more particular so that we can debate the real issues, the real facts that we have been asking for an opportunity to discuss.

Thank you, Mr. Chairman.

The CHAIRMAN. I recognize the gentleman from Ohio, Mr. Latta.

Mr. LATTA. Thank you, Mr. Chairman. As a reward for your patience, I shall not take my full 5 minutes.

I take this time to ask a couple of questions of Mr. Doar.

If we do not strike this item, it is your intention, then, to leave it in these general terms and to go to the statements of information for the details?

Mr. DOAR. I'm sorry, I didn't understand the question.

Mr. LATTA. Is it your intention if the article—item is not stricken as proposed by Mr. Sandman, is it your intention then to go to the statements of information for the details that will have to be spelled out specifically in the charge to the President?

Mr. DOAR. No; Mr. Latta, it would not be my intention to do that.

Mr. LATTA. Where will you get the information?

Mr. DOAR. You would have the statements in a report that would go along with the article to the floor, and in the report you would be keyed to the summary of information that you were furnished last week, and that in turn would also be keyed back to the statements of information, but what you would have, as I would envision it, you would have a report that was maybe 15, 20 pages long that would summarize these facts, these ultimate facts, and relevant facts, and that would be keyed if someone wanted further information to the summary of information that was about 150 pages long and had it all keyed to the statements of information where you could see the documentary—the evidence, the testimony, if you needed to see them.

Mr. LATTA. Where would the President have to go to find out the charges being made against him specifically?

Mr. DOAR. Well, the President would have the article or articles of impeachment.

Mr. LATTA. Which would be general.

Mr. DOAR. Which would be general.

The President would have the report of the committee. The President would have the summary of information, and the President would have the statements of information.

Mr. LATTI. He would have to go to all of those?

Mr. DOAR. Well, it isn't a question of reading them all. They would all be keyed so you could get from one to the other very easily. It is not—it is not a difficult job of getting in and out of this material if you have the proper index.

Mr. LATTI. So what you are saying, then, you are going to have a report in addition to the statements of information.

Mr. DOAR. Well, there would be a committee report. That is my understanding what the chairman has said.

Mr. LATTI. And you wouldn't be incorporating all 38 or 39 statements of information in that report.

Mr. DOAR. Oh, no.

Mr. LATTI. But the President would still have to go to those statements of information to get the details of the charges being made against him specifically.

Mr. DOAR. Not the details of the charges, but if he had—

Mr. LATTI. Let's get the specifics.

Mr. DOAR. The specifics would be in the—there would be more specifics in the report. If he was—you could be more specific if you looked at the summary of information that we furnished last week.

Mr. LATTI. Well, then, the question is how would the President know the charges being made against him if we left this charge, "making false or misleading statements to lawfully authorized investigative officers and employees of the United States"?

Now, will you just outline how he would know what those charges are so he can defend himself against them?

Mr. DOAR. Well—

Mr. LATTI. He would go then to the report from this document.

Mr. DOAR. He would go to the report, and if the report—then he would look at the summary of information. That is the document that we furnished, one notebook. Then in the one notebook that is keyed to the statement of information, and he could go to that and look into the actual testimony, for example, or the statement that a particular person made, or the press release, or whatever else was relevant on that subject and then—that is not unusual with respect to modern civil or criminal practice.

Mr. LATTI. It might not be unusual, but in cases, in criminal court these days we don't have 38 or 39 volumes of statements of information, and I would just like the American people to know what we are talking about. And this—

The CHAIRMAN. The time of the gentleman has expired. [Laughter.]

Mr. LATTI. I don't believe I need any more time, Mr. Chairman.

The CHAIRMAN. The gentlelady from New York is recognized for 5 minutes.

Ms. Holtzman.

Ms. HOLTZMAN. Thank you very much, Mr. Chairman.

I would like to speak in opposition to the motion to strike, and I am absolutely overwhelmed by the evidence with respect to this, and I think it has to be seen in context.

When I spoke earlier, I said that John Dean had confessed to the President on March 21 that many people in his administration had been guilty of criminal acts and the President said to Dean that your involvement in this, your obstruction of justice, was the "right plan." The President didn't pick up the phone and call Attorney General Kleindienst or call FBI Director Gray to say that criminal things are going on in my administration and I want to put an end to it. He didn't call Kleindienst on the 21st. He called Kleindienst on the 22d and he said, yes, you had better call Senator Baker at the Senate Watergate Committee and "babysit" with him "like 10 minutes." And then on the 27th of March, even though the President is burdened with this overwhelming information, this cancer that is growing, he tells Ehrlichman, "Have a session with him"—that is, Kleindienst—"about how much you want to tell him about everything."

The President: "I think you have got to say look, Dick, let me tell you Dean was not involved, had no prior knowledge, Haldeman had no prior knowledge. Ehrlichman had none and Colson had none."

But what was the President told by Dean? He was told that Haldeman had been told about the first two Liddy bugging plans, that in fact Haldeman had ordered Liddy to move the capability from Muskie to McGovern headquarters before the break-in. The President was told that Strachan knew and the President was told that Colson called Magruder to tell him to get going on the Hunt and Liddy plan. The President is telling Ehrlichman not to tell Kleindienst about all this information, and the criminal liability. Instead he is telling Ehrlichman to tell Kleindienst that nobody is involved, and nobody has prior knowledge.

Is this the kind of conduct we expect from our President? Is this the kind of concern that he has for the enforcement of the laws? Let's look at his conversation with Petersen in April. He said to Petersen on April 27—he is describing this March 21 conversation about what he said—about the Hunt blackmail payment—"And, believe me, nothing was approved. I mean as far as I'm concerned turned it off totally."

But if we recall the language that the President used on March 21 at the end of his conversation, his very own words, he said to Dean, "That's why for your immediate thing you've got no choice with Hunt but the 120 or whatever it is. Right? \* \* \* Well for Christ's sake get it \* \* \* in a way that uh."

Then the President goes on and he says to Petersen, that when he was talking to Dean about this blackmail money or this million dollars I said Dean, "You couldn't put it through a Cuban Committee, could you?"

Well, the President never said that to Dean. He never said anything like that. What in fact he said to Dean was how to make up an alibi on the hush money. The President's own words, "As far as what happened up to this time"—and that is referring to all the hush money payments—"our cover there is just going to be the Cuban Committee did this for them up through the election."

Dean: "That isn't, of course, quite the way it happened."

President: "I know, but it's the way it is going to have to happen."

Where do we see the President of the United States in his conversations either with Mr. Kleindienst or Mr. Petersen making any attempt

to deal with the criminal liability of the people around him and get rid of the cancer not only in his White House but in our country? And that is what we are talking about here, Mr. Chairman.

And I urge that this motion to strike be defeated.

The CHAIRMAN. The time of the gentlelady has expired.

The gentleman from Utah is recognized for 5 minutes.

Mr. Owens.

Mr. OWENS. Mr. Chairman, I rise in opposition to the motion to strike and I would like to refer back to the statements earlier of the gentleman from California, Mr. Wiggins, who, in debating this same motion was just to strike subsection 1 of this article to the effect that the President has made false and misleading statements to investigative officers and others.

Mr. Wiggins again spoke of the celebrated June 22 statement by the President in his press conference to the effect that there was no White House and no Committee for the Re-Election of the President involvement in the burglary which had taken place 5 days earlier and he said that there was no clear and convincing evidence as to when the policy, this policy of obstruction of the investigation which is at the heart of the Sarbanes substitute, that there is no clear and convincing evidence as to when the policy came into effect.

I would like to state and then take you to several items of evidence which all Members are aware of, that that policy clearly came into effect sometime between the 17th of June and this statement by the President on the 22d of June.

I think the strongest case can be made from inferences and from a reasonable application of what all Congressmen know is the procedure in all of our officers.

All the President's men, in essence, are aware from evidence that the Members are aware of, were aware prior to June 22 and several days prior, as a matter of fact, that Mr. Hunt, then technically on the rolls of the White House, had been involved in the burglary and that Mr. Liddy then, and who was continuing to serve as chief counsel to the Committee for the Re-Election of the President, everyone knew that those two men had been involved in the burglary prior to this time and we know in our offices, I would say members of the committee, that we follow those things and it is impossible to believe that the President could have been aware of the burglary which we know he was and to have been aware that it could have involved people in his—in his campaign committee or in the White House and not to have asked the question, but out of the President's own words we know that by June 22 he was aware of Mr. Hunt's and Mr. Liddy's involvement, that in Mr. Colson's testimony to this committee he clearly indicated that on the 19th, 2 days after the burglary, that he had a conversation with the President and the President's response was to throw—as reported to Mr. Colson—was to have thrown an ashtray across the room in disgust when he learned that the Committee for the Re-Election of the President was involved in that burglary, and we have the President's own memo to himself as has been called earlier on the night of June 20 when he indicates that in a conversation with Mr. Mitchell, Mr. Mitchell had informed him that personnel from the committee had been involved in the burglary.



And we know from Mr.—from the President's statement of May 22, 1973, in reference back to the days immediately following the Watergate burglary, when he says within a few days the name of Mr. Hunt surfaced in connection with the investigation and he uses that in reference to the time that he—that the CIA involvement became known to him which clearly indicates and is tied in prior to June 22.

So clearly the President has indicated in the evidence available to this committee, and it has got to be clear and convincing, that he did know that Mr. Hunt had been involved, again technically on the rolls of the White House, and that Mr. Liddy, still the chief counsel to the Committee for the Re-Election of the President, had been involved, both members had been involved, and yet with that background and with that in his conscience, with that in his mind, the President then went before the American public the night of June 22 and said in response to a question—

Mr. Ziegler and also Mr. Mitchell, speaking for the campaign committee, have responded to questions on this, the Watergate burglary, in great detail. They have stated my position, and have also stated the facts accurately. This kind of activity, as Mr. Ziegler has indicated, has no place whatever in our electoral process or in our governmental process, and as Mr. Ziegler has stated, the White House has had no involvement whatever in this particular incident.

Mr. Chairman, I yield back the balance of my time.

Mr. BROOKS. Mr. Chairman, I move the previous question.

The CHAIRMAN. The gentleman from Texas, Mr. Brooks, moves the previous question and the question is on the motion to strike paragraph 1 of the Sarbanes substitute. All those in favor of voting for the motion to strike please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed.

[Chorus of "noes."]

The CHAIRMAN. The noes appear to have it.

Mr. SANDMAN. Mr. Chairman, I demand a recorded rollcall.

The CHAIRMAN. The gentleman from New Jersey demands a rollcall. The clerk will call the roll. All those in favor of the motion say aye. All those opposed, no.

The clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. No.

The CLERK. Mr. Flowers.  
 Mr. FLOWERS. No.  
 The CLERK. Mr. Mann.  
 Mr. MANN. No.  
 The CLERK. Mr. Sarbanes.  
 Mr. SARBANES. No.  
 The CLERK. Mr. Seiberling.  
 Mr. SEIBERLING. No.  
 The CLERK. Mr. Danielson.  
 Mr. DANIELSON. No.  
 The CLERK. Mr. Drinan.  
 Mr. DRINAN. No.  
 The CLERK. Mr. Rangel.  
 Mr. RANGEL. No.  
 The CLERK. Ms. Jordan.  
 Ms. JORDAN. No.  
 The CLERK. Mr. Thornton.  
 Mr. THORNTON. No.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. No.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. No.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. No.  
 The CLERK. Mr. Hutchinson.  
 Mr. HUTCHINSON. Aye.  
 The CLERK. Mr. McClory.  
 Mr. McCLORY. Aye.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. No.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. Aye.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. No.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. Aye.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. Aye.  
 The CLERK. Mr. Fish.  
 Mr. FISH. No.  
 The CLERK. Mr. Mayne.  
 Mr. MAYNE. Aye.  
 The CLERK. Mr. Hogan.  
 Mr. HOGAN. No.  
 The CLERK. Mr. Butler.  
 Mr. BUTLER. No.  
 The CLERK. Mr. Cohen.  
 Mr. COHEN. No.  
 The CLERK. Mr. Lott.  
 Mr. LOTT. Aye.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. Aye.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. Aye.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. Aye.

The CLERK. Mr. Latta.

Mr. LATTA. Aye.

The CLERK. Mr. Rodino.

The CHAIRMAN. No.

The CLERK. Mr. Chairman?

The CHAIRMAN. The clerk will report.

The CLERK. Mr. Chairman, 11 members have voted aye, 27 have voted no.

The CHAIRMAN. And the motion is not agreed to. And the committee will recess until 12 noon tomorrow.

[Whereupon, at 11:35 p.m., the committee was recessed, to reconvene on Saturday, July 27, 1974, at 12 noon.]



## DEBATE ON ARTICLES OF IMPEACHMENT

### Business Session, Impeachment Inquiry

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SATURDAY, JULY 27, 1974

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The committee met, pursuant to notice, at 12:45 p.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Samuel Garrison III, minority counsel; Albert E. Jenner, Jr., senior associate special counsel; Bernard Nussbaum, senior associate special counsel; Richard Cates, senior associate special counsel; and Evan Davis, counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; Alan A. Parker, counsel; Daniel L. Cohen, counsel; William P. Dixon, counsel; Arden B. Schell, counsel; Franklin G. Polk, associate counsel; Thomas E. Mooney, associate counsel; Michael W. Blommer, associate counsel.

The CHAIRMAN. The committee will come to order.

The Chair wishes to announce that pursuant to the policy adopted when we considered the rule of procedure for this debate, that it contemplated that there be general debate for a period not to exceed 10 hours and that it was understood as agreed policy that the balance of the time for the consideration of amendments to the articles would not consume more than 20 hours.

The Chair wishes to point out that having commenced with the consideration of the articles yesterday for purposes of amendment, 12 hours have already been consumed of that time. However, as the committee certainly understands, the committee can extend time for consideration of the articles for purposes of amendment until we have resolved the entire question.

But the Chair would like to state that in the light of some of the motions to strike which are presently before the Chair, the Chair intends to recognize after a motion to strike has been proffered as an amendment to article I and to each paragraph thereafter that after

an hour's debate has expired, the Chair is going to entertain a motion to move the question and that the question will then be in order.

Mr. HUTCHINSON. Will the chairman yield?

The CHAIRMAN. I recognize the gentleman from Michigan.

Mr. HUTCHINSON. I thank the chairman for yielding. I would not want there to be any misunderstanding about the time limited for debate. My recollection is, Mr. Chairman, that in an earlier version of the rule which was adopted, there was a 20-hour limitation for amendment but that in the final version the wording was worked around the concept of the 5-minute rule and the provision does not limit debate to a total of 20 hours, and that while there was an expression of hope that it could be accomplished in that length of time, still if 12 hours have already been consumed and we have not yet disposed of article I, it becomes very obvious, Mr. Chairman, that it will be necessary to consume more than 20 hours to handle these articles and in order to extend beyond 20 hours, Mr. Chairman, I do not think it would take any formal action of the committee to extend the time for debate beyond that 20 hours. With regard to limiting debate on a motion to strike to 1 hour, Mr. Chairman, I would indicate that I certainly would interpose in objection to that.

Mr. SANDMAN. Mr. Chairman, reserving the right to object—

The CHAIRMAN. Mr. Sandman.

Mr. SANDMAN [continuing]. And I shall not object, I would like to say, and I hope that others will agree who took the position I did yesterday, that the argument was exhausted as far as I am concerned yesterday on the articles of impeachment along the line that I suggested. A vote has been taken. There are amendments on the desk that have my name on them and I would like to withdraw those because they are aimed at the same point of law that we discussed at great length yesterday.

It is my hope, Mr. Chairman, that we will be able to proceed with article I with the degree of discipline that existed yesterday and last night, no doubt continuing today. There is no way that the outcome of this vote is going to be changed by debate and I, therefore, hope that we can with dispatch cover the Sarbanes substitute and there will be no objections from me, no amendments from me, nor will there be any motions to strike from me.

Mr. RAILSBACK. Mr. Chairman?

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. Mr. Flowers.

Mr. FLOWERS. If I might be recognized for a short minute, knowing of my friend from New Jersey's conservative bent which I share, I would ask if he would be opposed to my borrowing the paper that he has already got at the desk and at all of our desks and adopt for my purposes the same motion to strike that he has proffered to subsection 1, I would be prepared at the appropriate time to offer this motion to subparagraph 2.

It is important to me, to know here in these debates that we are having this week, in this committee, on the allegations that are contained in article I and if there are any other articles to them, the specifics of the charge I believe this is important. The gentleman from Wisconsin, I think agrees with me on this. We discussed it here in the committee last evening.

So I propose, Mr. Chairman, I take this time merely to point out that it would be my purpose to offer a motion to strike the various paragraphs to seek out the information that would support the paragraphs from the members of the counsel.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I have an amendment that I would like the clerk to read.

The CHAIRMAN. If the gentleman will defer, the Chair was not recognizing the gentleman for purposes of offering an amendment since I believe that at this time the Chair is going to state that it is going to be its policy to first recognize those who have perfecting amendments, and I had already indicated to Mr. Hogan that I would recognize Mr. Hogan for that purpose.

Mr. RAILSBACK. Am I recognized for the other purpose, then?

The CHAIRMAN. The gentleman will be recognized, and I would like to also state that if the gentleman from Alabama was asking that his name be substituted for that of Mr. Sandman which appears on the motions to strike that are on the clerk's desk, if there is no objection, I will entertain that so that the gentleman would have that proper motion before the clerk's desk if it is not.

Mr. RANGEL. Mr. Chairman?

Mr. RAILSBACK. Mr. Chairman, I think I still have the time, do I not?

The CHAIRMAN. The time is reserved to the gentleman for offering his motion after the gentleman from Maryland.

Mr. RAILSBACK. No. That is not what I wanted to speak on. I wanted to congratulate my friend from New Jersey. He says it is about time [laughter] for doing something that I think is very wise and very prudent and very thoughtful on his part and also in the best interests of this committee, and once again I think that he has shown his good sense. As far as my good friend, Mr. Flowers, is concerned, I hope that if he does move to strike every single numbered item, that we maybe can expedite the debate on each item because frankly, I think a lot of us thought that there was a great deal of repetition last night, and I think we ought to be able to either present the case for or against in a little bit more expeditious manner.

I will yield back, Mr. Chairman.

Mr. RANGEL. Mr. Chairman?

The CHAIRMAN. Mr. Rangel.

Mr. RANGEL. I want to join in the praise given to the distinguished gentleman from New Jersey for withdrawing his motions to strike in the interests of saving time, and then ask the distinguished gentleman from Alabama if indeed it is his purpose to bring facts before this committee as relates to specifics of Presidential wrongdoing, and certainly not to strike but to serve as an educational function and recognizing that a motion to strike may serve as that parliamentary vehicle.

I was wondering whether the distinguished gentleman from Alabama would accept either staff or members reciting specific dates and times that support that particular article. I think if the question really is one to educate the general public, then perhaps we could recite that

information, but certainly whether any of the members of this committee agree on the standard of evidence that we will be using, there is no question that we do know what evidence we are using at this time.

We may differ on the quality and the quantity that we think is necessary to support an article of impeachment, but I ask the distinguished gentleman from Alabama that if indeed he wants to educate the general public and have specifics, would he not consent to those specifics being either by staff or members to support the article so that we can move on and finally get an opportunity to vote on this historic question.

Mr. FLOWERS. Is this directed to me, Mr. Rangel?

Mr. RANGEL. Yes.

I yield to the gentleman from Alabama.

Mr. FLOWERS. I think that the only way in which we can elicit this information is through this vehicle or motion as it pertains to each one of the subparagraphs which tend to support the general statement in paragraph 2. My purpose is to elicit the information and to find out what evidence there is, and I would hope that the staff and members of the committee would be able to respond expeditiously, as my friend from Illinois says, and we will not take a great amount of time, but I do not think that we should sacrifice thoroughness for expedition here.

Mr. RANGEL. No.

My question is, Mr. Flowers, if we were to read paragraph 2 and if in fact staff or a member of this committee would give you information and specifics as to what the President did nor did not do to support that paragraph, would you accept that and be prepared to allow the committee to vote as to whether or not this is sufficient evidence to support that paragraph?

Mr. FLOWERS. I will say to the gentleman from New York that the only way a member can gain the floor is to offer an amendment at this point, and there is no other parliamentary device for a member to gain the floor, having already used up the 5 minutes which we were allocated in general debate on this article and, for that purpose, I do not see that the parliamentary situation would allow that.

Mr. RANGEL. If you stick to the word "debate," there is no question that we have to deal with the motion to strike, but I am certain that the Chair would allow us, as Mr. Sarbanes goes down the paragraphs, to give that specific information which we have used to support it and then, if that was done, there would be no need for 38 members to debate it. It would be a question as to whether we agreed with it and we could vote on it.

I yield back the balance of my time.

Mr. McCLORY. Mr. Chairman, parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. McCLORY. Mr. Chairman, I have, as you know, a proposed article II and proposed article III, and I just want to be sure that I understand what our procedure will be for today.

I understand that you will entertain perfecting amendments which will be discussed and that then you propose that with respect to motions to strike articles, for purposes of—

The CHAIRMAN. Debates.



Mr. McCLORY [continuing]. Debates, and for getting additional information such as the gentleman from Alabama suggests, that you will entertain a motion to close debate, a motion on the previous question at the end of 1 hour's time with regard to each one of the paragraphs. Is that correct?

The CHAIRMAN. Or if a member would move the previous question earlier.

Mr. McCLORY. But not to exceed 1 hour of discussion with regard to information with respect to each of the subparagraphs.

The CHAIRMAN. That is correct.

Mr. McCLORY. Thank you, Mr. Chairman.

Mr. LATTA. Mr. Chairman, I have an inquiry.

Thank you, Mr. Chairman.

Let me say I concur in Mr. Sandman's statement. We are certainly not bowing just because we want to be bowing. We are bowing to the obvious and the obvious is that we do not have the votes. We are not deserting our position. We think it was a proper position.

Yesterday those who believed as deeply as we did were not resorting to dilatory tactics, as has been reported in some places, but we definitely felt that the President of the United States should be able to answer the charges that were being made against him, and they were not specific. They are still general, and that is the way they are going to be, they are going to remain.

But I would like to at this juncture, Mr. Chairman, point out that there has been some misinformation going out across the country that, had we been successful and made these articles specific, that they could not have been amended on the floor of the House. I know the Chair knows and every member of this committee knows that we are not going to grant in the Rules Committee a closed rule on this matter. It will be an open rule and subject to amendment on the floor.

So if there are any additional charges that wish to be brought or times or places under any of the articles that have been mentioned here that wish to be included, it could have been included by amendment on the floor of the House.

I would just like to make the record straight that here is one member, and I am sure that there are going to be 14 other members on the Rules Committee when this matter comes up there, going to be voting for an open rule.

The CHAIRMAN. The Chair would like to point out that while the rule has yet to be established since that will be a matter before the Rules Committee, the Chair is certainly going to recommend that there will be full and free debate, as this is a matter of such moment, and be considered as it should be considered deliberately and fully by the full House, and therefore, I think that the members recitation of what could be expected is indeed in order.

Now, I recognize for a parliamentary inquiry the gentleman from California, Mr. Danielson.

Mr. DANIELSON. Mr. Chairman, at the appropriate time I will wish to offer a perfecting amendment to paragraph 4 of article I. I wish to reserve the right of offering that amendment, and I do inquire as to when would be the appropriate time?

The CHAIRMAN. Perfecting amendments are in order at any time. The bill is now being read by way of vehicle of the substitute and it is amendable at any stage.

Mr. DANIELSON. Should the amendment be offered at the time we take up subparagraph 4 for consideration?

The CHAIRMAN. No; the amendment may be offered at any time.

But, I am now going to, for the purposes of recognizing Mr. Hogan, who has already proposed perfecting amendments, I will recognize him for 5 minutes.

The clerk, however, has not read his amendment.

Mr. HOGAN. Thank you, Mr. Chairman.

I have two amendments at the desk, Mr. Chairman, and I would ask unanimous consent that I be permitted to address myself to both of them at the same time, and that we vote on them at the same time.

The CHAIRMAN. Without objection, it is so ordered.

The clerk will read the amendments.

The CLERK [reading]:

Amendment by Mr. Hogan.

On page 1 of article I, on the second paragraph, and on page 2, paragraph 5, strike "illegal entry," where it occurs and insert in lieu thereof "unlawful entry."

Amendment by Mr. Hogan. On page 1 of paragraph 3, quoting subparagraph "(number 1)" after the word "making," insert the following new language: "or causing to be made."

The CHAIRMAN. The gentleman from Maryland.

Mr. HOGAN. Mr. Chairman, we should be aware that my amendments are to the Sarbanes substitute which is before us.

Mr. DENNIS. Mr. Chairman, we have no copy of the second amendment.

Mr. HOGAN. Mr. Chairman, I believe they are being distributed. Am I recognized, Mr. Chairman?

The CHAIRMAN. The gentleman is recognized for 5 minutes.

Mr. HOGAN. Thank you, Mr. Chairman.

When I returned last night, my wife, who had been watching the deliberations on television, reminded me that many of the prior impeachments were not handled by the Judiciary Committee, and she wondered if the deliberations would take as long if Speaker Albert had entertained sending it to a select committee made up of non-lawyers, if it would take us as long to complete it. She also then said that she understands full well why lawyers are barred from serving on grand juries.

Having said that, I have before the committee two what I guess could be fairly—be characterized as legalistic amendments. However, I do think they are important.

Addressing myself to the first one, Mr. Chairman, where we use the word "illegal entry," rather than unlawful, I noted that in the D.C. Code title 22, section 1801, a burglary is entry with intent to break and carry away any part thereof. And while the Watergate burglary is very frequently referred to as a burglary, it is not strictly speaking, according to the D.C. Code a burglary. It is a breaking and entering.

So, what my amendment does, it tries to track the language of the statute in title 22, section 3102, relating to unlawful entry on property. It also, I understand, tracks the language in some of the indictments on conspiracy.

Now, I do think that while it may seem to be a miniscule change, I think it strengthens the situation by having it more accurate.

Second, Mr. Chairman, in paragraph 1 after the word "making" include "or causing to be made," as I think the record substantially supports the addition of this language. While the President did personally, in fact, make false and misleading statements, he also induced others to make false and misleading statements. So, I would urge that both of these amendments, which I consider perfecting amendments, be adopted.

I yield back the balance of my time.

Mr. SARBANES. Will the gentleman yield?

Mr. HOGAN. I yield to the gentleman from Maryland.

Mr. SARBANES. Mr. Chairman, I would like to say that I think, as my colleague from Maryland has stated, that these are helpful and valuable perfecting amendments. I appreciate the legal scholarship that has gone into these amendments. I do think they help to improve the proposition that is before us, and I would hope that the members would recognize and accept these amendments to the substitute.

Mr. HOGAN. Mr. Chairman, I move the previous questions on my amendments.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Maryland, and I understand that these are being offered in bank?

All those in favor of the amendments, please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[No response.]

The CHAIRMAN. And the amendment is agreed to.

I recognize the gentleman from California, Mr. Danielson.

Mr. DANIELSON. Mr. Chairman, I have an amendment at the desk.

The CHAIRMAN. The clerk will read the amendment.

The CLERK [reading]:

Amendment to article I offered by Mr. Danielson.

On page 2, subsection 4 strike the word "and" in line 3 and strike the semicolon after the words "Special Prosecution Force" in line 4 and add at the end of line 4 the following: and congressional committees;

Mr. DANIELSON. Mr. Chairman, the thrust of subparagraph 4, as is apparent, relates to the interference by the President, or endeavoring to interfere with the conduct of investigations by the Department of Justice, the FBI, the Office of Watergate Special Prosecution Force. I should like to add to those agents congressional committees.

I have in mind specifically the House Committee on Banking and Currency under the chairmanship of Hon. Wright Patman.

You will recall, a couple of days ago, during the early stages of our debate, I quoted at some length from the September 15, 1972, tape transcript of the conversation in the President's Oval Office in which it was apparent that the President, his Chief of Staff, Mr. Haldeman, and Mr. Dean were planning on how they could possibly prevent the House Committee on Banking and Currency from conducting investigations into the whereabouts, the source, the transmission of certain funds that were found in the possession of the people arrested in the Watergate on June 17.

The plan was rather elaborate. The President first offered to do so himself, and then he suggested that Mr. Ehrlichman, or Mr. Mitchell, or some other person contact and enlist the aid of Gerald Ford, who at that time was the minority floor leader and various other Members of the House of Representatives, to prevail upon Mr. Patman to not, to desist from conducting his investigation.

In all fairness, I want to point out that Mr. Dean's testimony later was that the Members of the House who were being prevailed upon to in turn prevail upon Mr. Patman were not aware of the fact that they were being used for this purpose. The guise of the argument was that what if the trial forthcoming of the burglars, and maybe I should say the unlawful entrants, that a congressional hearing into their activities might prejudice their case and might interfere with their civil rights. This was explored at some length. I do not wish to reiterate it here, because you have all heard it.

In addition, they had a plan whereby they were to contact Mr. Rothblatt, who was the attorney for four or five of the defendants, and Mr. Bittman, who was the attorney for Mr. Hunt, and have them in turn call upon Mr. Patman and urge that he not conduct the investigation because it might interfere with their clients' civil rights.

Other testimony before this committee is that Mr. Bittman acknowledges that he was contacted and was requested to get in touch with Mr. Patman, but that he declined to do so. Records of the House Committee on Banking and Currency reflect that there was a letter from Mr. Rothblatt, making the same argument.

Carrying on, I have also in mind the Senate Select Committee on Campaign Activities. I might add, going back, that the Banking and Currency Committee was not able, due to these efforts, to muster enough votes to pass a resolution to conduct the investigation, and the investigation was postponed.

The fear in the minds of the President, Mr. Haldeman, and Mr. Dean while they talked in the Oval Office was that if Wright Patman was able to issue subpoenas and call in the witnesses, he might uncover almost anything. It was a can of worms and they didn't know what might happen if Patman were given a chance to conduct the investigation he wanted.

Their fear was the disclosure of the fact that the \$3,200 in new consecutive numbered bills found at the Watergate did in fact come through a Florida bank account, could be traced back to a Minnesota donor that had been laundered in some kind of an operation down in Mexico.

Proceeding on to the Senate select committee, we do have testimony from some of the tapes furnished to us by the White House that at various times in the proceedings the President counseled his aides to, if they did appear, to stonewall it, to say nothing, to say they could not recall, to take the fifth amendment, to do anything, but not let the plan come out.

This, I submit, is a specific example of an effort to obstruct-and-interfere with the lawful function of that committee.

And, third, I refer to our own committee, the House Committee on the Judiciary. In connection with the coverup plan, which I submit is still going on, the President has openly and notoriously and knowingly persisted in defying this committee in its lawful subpoenas and

has failed and refused to turn over the documents that we have requested.

I respectfully submit that we should include within subparagraph 4 congressional committees.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. Mr. Chairman, I do not oppose the motion of the gentleman from California to include the language. The problem is will the prosecutors in this case be able to prove the charge.

Let me review my recollection of the evidence with respect to whether the President interfered with a congressional committee. First in the context of the Patman hearings, bearing in mind, ladies and gentlemen, that there was no Patman hearing. What we had was an intention on the part of the Chairman, Mr. Wright Patman, to do something, which he announced publicly, but the members of his committee, including six Democrats, would not go along with him. He was thwarted, not by the President, but by the Members of Congress, who were on his committee, and that hearing, that congressional activity never got off the ground.

I am not willing to attribute to the 20 members who voted against the chairman of the Banking and Currency Committee any corrupt motives and do not regard them as coconspirators in this case.

Moving next to the Senate select committee, the only interference of the President with the conduct of the Senate select committee was for a period of time a consideration of the invocation of executive privilege with respect to his aides testifying before that committee. As we all know, shortly thereafter, that policy, which was characterized as stonewalling it, that is the invocation of executive privilege, that policy was abandoned by the President, and the policy thereafter that was that all of his aides would go before the Senate select committee and testify freely, without claiming privilege and, of course, we know that is, in fact, what occurred.

The legal question, the legal question on the basis of those facts is whether or not we are going to punish the President in the context of impeachment for considering the invocation of executive privilege. Now, if so, future Presidents are in jeopardy, because the executive privilege concept is still alive and well in American jurisprudence.

Finally, with respect to interference with this committee, I think that probably we will debate that more extensively in the context of a separate article, and so I will not address myself to it now. But, in essence, I say to my friend we are still talking about punishing the claim by the President of a right to withhold evidence by reason of his assertion of either executive privilege or a claim of nonrelevancy, and I do not understand that our system of Government prohibits the punishment of a good faith claim on a narrow and otherwise confused legal issue, and so in conclusion, I will say to my friend, I don't oppose your amendment at all. I just simply indicate that the facts to date do not support it.

Mr. DANIELSON. Mr. Chairman, may I respond very briefly?

Mr. WIGGINS. You can if I yield to you and I will be pleased to do so.

Mr. DANIELSON. I thank the gentleman. I am sorry. I thought he had concluded.

I do not disagree with my colleague's argument. I want to make eminently clear and I thought I had that the vote of the members not to hold the committee meeting was certainly not corrupt. They were—the background to which I have alluded was not brought to their attention and I make no assertion and no implication that there was any corrupt voting.

On the other portion I agree that whether or not this article can be proved is a matter of proof and that would have to be resolved, of course, at the appropriate time, in the trial in the Senate. But we are bringing here on impeachment—all we are doing is bringing an accusation. I think there is sufficient evidence to warrant that the matter be tried and, therefore, I urge the adoption of my amendment.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. The gentleman from Illinois is recognized for 5 minutes.

Mr. McCLORY. Thank you, Mr. Chairman.

I intend to support this amendment. While I do not favor the entire article, it seems to me that nevertheless, in perfecting this article we should include the words "and congressional committees" as suggested by the gentleman from California, Mr. Danielson, because in my opinion, the defiance of this committee by the President in refusing to provide information to this committee is a serious situation and one which in my opinion, suggests valid grounds for an article of impeachment.

I propose at a later time to offer a separate article on this ground and I would like to call attention to that fact that following the President's refusal to respond favorably to our subpoenas, we notified the President on May 30 that this would be regarded as an impeachable offense if he did not comply with our subpoenas.

Now, I do not agree with the interpretation of executive privilege as suggested by the gentleman from California, Mr. Wiggins. I think that the doctrine of executive privilege must yield when the Office of the President is being investigated. Otherwise the President is in the position where he can dictate what he wants to provide this committee with and what he does not want to provide the committee with. It seems to me that in order for us to carry out a valid and full and fair investigation we need all of the information which we have required and which we deem necessary. And our position has been definitely strengthened by the recent opinion of the Supreme Court which has knocked down this doctrine, that so-called doctrine of the absolute executive privilege and in offering a motion yesterday that we defer our proceedings for the purpose of giving the President an opportunity to provide the additional tapes that we have requested, it seems to me that an opportunity again was offered for him to provide the kind of cooperation which it seems to me he should have been providing throughout these proceedings. And so I think it is perfectly valid for us to put in this article the inclusion of the words "and congressional committees" because in addition to his interference and misuse perhaps of other agencies of Government, his defiance of this committee is, in my opinion, a most serious matter and is entitled to be presented to the House of Representatives together with this proposed article as well as a later article which I propose to introduce.

Thank you, Mr. Chairman.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. I recognize the gentleman from Illinois, Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I am opposed to the article by the gentleman, Mr. Danielson, from California. Anybody that had any knowledge I believe of the possible motivations at that particular time of the Patman committee, who was on the receiving end of a possible investigation to be conducted by Wright Patman, probably would have had good reason to try to avoid what they believe very easily could have been a political fishing expedition and I think it is very significant that the members of his own committee decided not to go along with the chairman in conducting that kind of an investigation which I think many of them believed was going to be a political fishing expedition. In respect to executive privilege, I agree with the comments made by the gentleman from California, Mr. Wiggins, and as far as refusing to comply with our subpoenas, it is my own belief that that failure should not constitute an independent or separate article or item in an article of impeachment.

I think the President probably had a right to assert executive privilege even though I am convinced that if it had been taken to court, the court would have ruled against the President.

I think—I think, Mr. Chairman, what we are doing here is we are adding something that cannot be proved and that would certainly weaken article I.

Mr. FISH. Will the gentleman yield?

Mr. RAILSBACK. Yes; I will. I will be glad to yield.

Mr. FISH. I thank the gentleman for yielding and I would just like to associate myself with his remarks. I think in considering the language in an article of impeachment we must always bear in mind that it must rise to the gravity of a crime against the constitutional system and I agree with you that this proposed additional language simply does not meet that test.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California. All those in favor of the amendment, please signify by saying aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed.

[Chorus of "noes."]

Mr. RAILSBACK. Can we have a record vote? Mr. Chairman, can we have a record vote, please?

The CHAIRMAN. A record vote is demanded and the clerk will call the roll. All those in favor of the amendment, please signify by saying aye. All those opposed no, and the clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. Aye.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.  
 Mr. CONYERS. Aye.  
 The CLERK. Mr. Eilberg.  
 Mr. EILBERG. Aye.  
 The CLERK. Mr. Waldie.  
 Mr. WALDIE. Aye.  
 The CLERK. Mr. Flowers.  
 Mr. FLOWERS. No.  
 The CLERK. Mr. Mann.  
 Mr. MANN. Aye.  
 The CLERK. Mr. Sarbanes.  
 Mr. SARBANES. Aye.  
 The CLERK. Mr. Seiberling.  
 Mr. SEIBERLING. Aye.  
 The CLERK. Mr. Danielson.  
 Mr. DANIELSON. Aye.  
 The CLERK. Mr. Drinan.  
 Mr. DRINAN. Aye.  
 The CLERK. Mr. Rangel.  
 Mr. RANGEL. Aye.  
 The CLERK. Ms. Jordan.  
 Ms. JORDAN. Aye.  
 The CLERK. Mr. Thornton.  
 Mr. THORNTON. Aye.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. Aye.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. Aye.  
 The CLERK. Mr. Mezvinsky.  
 [No response.]  
 The CLERK. Mr. Hutchinson.  
 Mr. HUTCHINSON. No.  
 The CLERK. Mr. McClory.  
 Mr. McCLORY. Aye.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. Aye.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. No.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. No.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. Aye.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. Aye.  
 The CLERK. Mr. Fish.  
 Mr. FISH. No.  
 The CLERK. Mr. Mayne.  
 Mr. MAYNE. No.  
 The CLERK. Mr. Hogan.  
 Mr. HOGAN. No.  
 The CLERK. Mr. Butler.  
 Mr. BUTLER. No.



The CLERK. Mr. Cohen.

Mr. COHEN. No.

The CLERK. Mr. Lott.

Mr. LOTT. No.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. No.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. No.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. No.

The CLERK. Mr. Latta.

Mr. LATTA. No.

The CLERK. Mr. Rodino.

The CHAIRMAN. Aye.

Mr. MEZVINSKY. Mr. Chairman?

The CHAIRMAN. Mr. Mezvinsky.

Mr. MEZVINSKY. I would like to register my vote as aye.

The CHAIRMAN. Mr. Mezvinsky is voting aye.

Mr. MEZVINSKY. Aye.

The CLERK. Mr. Chairman?

The CHAIRMAN. The clerk will report.

The CLERK. Twenty-four members have voted aye, 14 have voted no.

The CHAIRMAN. And the amendment is agreed to.

I recognize the gentleman from Illinois, Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I have an amendment at the desk which I would like read.

The CHAIRMAN. The clerk will read the amendment.

The CLERK [reading]:

Amendment by Mr. Railsback.

On page 1, beginning at line 11, after the word "intelligence" strike all that follows through line 17 and insert in lieu thereof the following new language, "subsequent thereto, Richard M. Nixon, using the powers of his high office, engaged, personally and through his subordinates and agents, in a course of conduct or plan designed to delay, impede, and obstruct the investigation of such unlawful entry; to cover up, conceal, and protect those responsible; and to conceal the existence and scope of other unlawful covert activities."

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. The gentleman is recognized for 5 minutes.

Mr. RAILSBACK. This language replaces the following language:

Subsequent thereto, Richard M. Nixon, using the powers of his high office, made it his policy, and in furtherance of such policy did act directly and personally and through his close subordinates and agents, to delay, impede, and obstruct the investigation of such illegal entry; to cover up, conceal and protect those responsible; and to conceal the existence and scope of other unlawful covert activities.

Mr. Chairman and members of the committee, I have a great deal of difficulty believing that Richard M. Nixon, at a particular point in time, contrived any kind of a policy, or at least any kind of a policy that would continue to follow through, and I think the word "policy" gives the impression of an affirmative, orchestrated, declarative decision that occurred at a given point in time.

I thought that some of Mr. Wiggins' objections yesterday were very well made. I think what the record reflects, however, is a course of

conduct or, in the alternative, a plan of action over many months which was responsive to and developed as a consequence of events that occurred, and that is the reason for my amendment.

It seems to me that we are going to be asked to prove the charges that we make and it seems to me that we would have a great deal of difficulty proving that the President had any kind of a policy that we could pinpoint as of June 23 or July 6 or August 29, but rather, that many of the things that he did were in response to certain events that occurred.

Mr. LATTA. Would the gentleman yield?

Mr. THORNTON. Would the gentleman yield?

Mr. RAILSBACK. I will be glad to yield.

The CHAIRMAN. Yielding to the gentleman from Arkansas.

Mr. THORNTON. I thank the gentleman for yielding.

I would like to say that I think the language suggested by the gentleman is superior to the language which we have had before us, and I am in full support of this amendment.

Mr. RAILSBACK. I thank the gentleman.

The CHAIRMAN. The gentleman from Texas, Mr. Brooks, is recognized.

Mr. BROOKS. Mr. Chairman, I speak in favor of the amendment. I think that basically it reflects the attitude of this committee by doing a fair and reasonable job of drawing this language. It is not a pleasant chore to impeach a President. Certainly we want to do it in the most legal and reasonable manner.

I think that this language is perfectly adequate to explain the factual situation at that time. I think that it eliminates some difficulties in the minds of some Republicans about policy. I think the course of conduct or plan is quite adequate to indicate the fact situation and I would commend Mr. Seiberling for his genius in originally working on some of this language, and Mr. Railsback in implementing it, putting it together, and I would hope that we could adopt it without tremendous delay.

Mr. MANN. Will the gentleman yield?

Mr. BROOKS. I will be pleased to yield to my friend from South Carolina, Mr. Mann.

Mr. MANN. I want to join in expressing appreciation to Mr. Railsback for developing this more definitive language.

As we well know, we want to give as much specificity as possible to the general allegations of this article. I think this contributes to that end. It removes a fuzzy area that caused us some difficulty yesterday, and I appreciate the gentleman's efforts.

Mr. OWENS. Will the gentleman yield?

Mr. BROOKS. I yield to my distinguished friend from Utah.

Mr. OWENS. I spent 5 minutes last evening arguing that the President had in fact made it his policy, and I really believe the evidence sustains it, but I will support the amendment because I believe it will make the proof in the Senate much easier and—

Mr. BROOKS. And that is where it is likely to be.

Mr. OWENS. I thank the gentleman from Illinois. That is where the problem will likely be.

I thank the gentleman for yielding.

Mr. BROOKS. I yield to my friend from Maryland if I still have the time left.

Mr. SARBANES. Mr. Chairman, any lawyer worth his salt ought to recognize an improvement when it comes along. I know the concern that Mr. Railsback has had with this language and I know how he has worked on this problem. I think that the language that he has proposed here this afternoon is a very constructive suggestion. I commend him for the skill that he has shown in developing this language.

I would hope that the committee would adopt the proposed amendment.

Mr. SEIBERLING. Will the gentleman yield?

Mr. BROOKS. If I have any time left, I yield to my friend Mr. Seiberling.

Mr. SEIBERLING. The gentleman mentioned my name. I want to say quite quickly that I appreciate his somewhat overlavish praise for some very small part I had in this language and I think the credit is due to Mr. Railsback for finalizing this, and I just want to say that any time we can make an improvement in language to focus on substance rather than on semantics, I think it is a real step in the right direction.

Mr. DRINAN. Mr. Chairman?

The CHAIRMAN. The time of the gentleman has expired.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Mr. Chairman, I would like to address a question to the author.

The CHAIRMAN. The gentleman is recognized.

Mr. DENNIS. To my distinguished colleague from Illinois, what is your view of the difference between "plan," as you propose, and "policy," as contained in Mr. Sarbanes' substitute?

Mr. RAILSBACK. Well, if the gentleman will yield—

Mr. DENNIS. I yield.

Mr. RAILSBACK. Let me say that I have some difficulty myself with the word "plan" and at one time it was suggested that the language read "course of conduct and plan," and I am not sure that I can answer that there is that much difference between the word "plan" and "policy" except there seems to be a feeling on the part of the counsel that I dealt with in drafting that "policy" seems to give more of an impression of an affirmative, orchestrated, and declarative decision.

I will tell you, the reason why I took out the word "and" is because I personally favored the words "course of conduct" which I think more aptly fits the situation.

Mr. DENNIS. Well, if the gentleman will yield further, does the gentleman think that his change gets us further away from the conspiracy theory or nearer to it?

Mr. RAILSBACK. Well, I really would prefer not to express my legal opinion on that. I think that—

Mr. DENNIS. I would be real interested in your legal opinion on that.

Mr. RAILSBACK. Well, I will say to the gentleman, what the amendment does is express my belief that there were certain events which occurred which, for one reason or another, the President did not either

see fit to respond to or in some events responded to in what I believe to be an improper way.

I do not think that they were necessarily orchestrated. If there ever was a time when the President perhaps came close to a policy, it would have been that time, in my opinion, after March 21 when all the——

Mr. DENNIS. Let me ask the question——

Mr. RAILSBACK [continuing]. Events were divulged to him.

Mr. DENNIS [continuing]. If I may.

Mr. RAILSBACK. I am sorry.

Mr. DENNIS. I thank you for your answer.

I suggested when I was talking to Mr. Sarbanes yesterday that under his version you would have to first establish the policy before you could use against the President the actions of subordinates.

Do you think that would be equally true or not under your version?

Mr. RAILSBACK. Let me make myself very clear on that.

I do not intend I am putting criminal responsibility on the President for acts of his subordinates and I want to make that very clear. I do not believe in inferring anything either. I think that is why some of us on this side believe very strongly that there should be a bill of particulars, or if Mr. Flowers——

Mr. DENNIS. Well, is it your idea——

Mr. RAILSBACK [continuing]. Wants to——

Mr. DENNIS. [continuing]. You are taking—by your amendment you are talking to the possibility of attributing to the President acts of third persons which Mr. Sarbanes was definitely under his theory attempting to do?

Mr. RAILSBACK. Well, my recollection of Mr. Sarbanes' response when I inquired yesterday of him was that he does not believe in the Madison theory or the——

Mr. DENNIS. No, he——

Mr. RAILSBACK [continuing]. Or the Madison concept.

Mr. DENNIS. But he still was attempting to do it by his theory of the policy.

Now, are you saying we are taking it out altogether?

Mr. SARBANES. Will the gentleman yield?

Mr. DENNIS. Wait. I would like to see what Mr. Railsback——

Mr. RAILSBACK. My thrust I guess is to get away from the language of "policy" and I think I have answered your question as far as my own beliefs about not inferring, criminal responsibility.

I do not think I can answer it any more clearly. I do not impute any kind of criminal responsibility, and I think that the President should only be charged with direct acts or knowledge. I think there has to be some kind of Presidential knowledge or involvement. I just happen to think there is.

Mr. COHEN. Mr. Chairman?

Mr. DENNIS. I thank the gentleman for his answer and reserve the balance of my time.

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. The gentleman from Maine is recognized.

Mr. COHEN. Perhaps I can add to Congressman Railsback's response, having discussed this matter with him at some length. I believe the word plan was used in his substitute, because this is the exact language

that the President used. Referring to the transcripts of March 22, 1973, when there was a discussion between Mr. Mitchell and the President, you recall the words that "up to now our plan has been one of containment" and then there was an additional reference to the fact that "we are adopting a new plan," and that new plan was going on to the use and implementation of executive privilege to be asserted for some of the aides going before the Senate select committee.

Now, that was the reason I think that you incorporated the word plan. I yield back.

The CHAIRMAN. Mr. Wiggins, are you seeking recognition?

Mr. WIGGINS. Yes, Mr. Chairman. May I be recognized?

The CHAIRMAN. The gentleman is recognized.

Mr. WIGGINS. Thank you, Mr. Chairman.

I have several questions which I will be directing to my colleague, Mr. Railsback, about his amendment. I have it before me, and it seems to say, omitting the parenthetical expression, that Richard Nixon engaged personally in a course of conduct or plan designed to delay, impede, and do other acts in connection with an obstruction of justice charge.

Now, I want to understand, does the word designed as used in your amendment, Mr. Railsback, mean that the President intentionally and corruptly acted for the purposes of delaying, impeding and so forth? Is that your intent?

Mr. RAILSBACK. Will the gentleman yield?

Mr. WIGGINS. Of course.

Mr. RAILSBACK. I think that the design can relate to the course of conduct, or the word plan, and I think that it clearly means that the action that he took willingly.

Mr. WIGGINS. And to carry on, knowing the purpose of his acts, that is to obstruct, delay, interfere, and impede with the due administration of justice?

Mr. RAILSBACK. If my friend will yield, the answer is yes.

Mr. WIGGINS. All right. Then that evidence which may be before us, which does not suggest that the motivating purpose of Presidential actions was to obstruct, delay, hinder, and impede and so forth would not be covered by the language of yours in this amendment, is that so, Mr. Railsback?

Mr. RAILSBACK. Well, let me make myself clear on that. If you are suggesting that the litany or the recital of events that was made by Mr. Waldie yesterday, which referred to many acts about which we have no knowledge of direct Presidential direction or involvement, the answer again is yes. I do not, I do not think there is, frankly, a proper place to be considering things other than that which relates to the President. We are talking about the impeachment of the President of the United States. We are not talking about criminal indictments returned, unless they happen to relate to his knowledge or to his direct involvement.

Mr. WIGGINS. All right, now. I think it would be a fair summary of the gentleman's position, and if I err you are right here to correct me, that you intend by this language to put on the managers in the Senate the burden of proving that the President personally acted to corrupt the due administration of justice by intentionally engaging

in a plan or design, a course of conduct or a plan which was intentionally designed to obstruct justice. Now, is that a fair statement?

Mr. RAILSBACK. What I intend by the amendment is to suggest that Richard M. Nixon, if it can be shown in the Senate, and if he can be held to account in the Senate, that he used his power of his high office, engaged personally and through his subordinates and agents in a course of conduct or plan designed to delay, impede, and obstruct the investigation of such unlawful entry to cover up, conceal and protect those responsible and to conceal the existence and scope of other unlawful and covert activities. In other words, the words speak for themselves.

Mr. WIGGINS. I understand. You mean what you said.

Well, I am running out of time. I want to clear up the question, however, of the conduct of his aides. In order to have this be the President's acts, you would require, I am sure, that at least he had knowledge of the acts of his aides, or that he instructed them with the requisite corrupt intent to obstruct justice, would you not?

Mr. DENNIS. Mr. Chairman? Excuse me.

Mr. RAILSBACK. I would answer the gentleman by saying that the language still speaks for itself. But, it is my belief that to hold Richard Nixon to account and to remove him from office it must be proven that he has committed a serious offense, serious enough for which he should be removed from office.

Now, if he directed something, or if he participated in something, or if he was involved in something that was clearly illicit, if he falsely misled the American people, or if he obstructed justice, or impeded justice, or interfered with the due administration of justice, or if he abused the power of the sensitive agencies of the IRS, well then I think that is what he is going to be held to account for.

Mr. WIGGINS. All right. Fine. I appreciate the gentleman's explanation and I support the gentleman's amendment as explained.

The CHAIRMAN. The time of the gentleman has expired.

Mr. DENNIS. Mr. Chairman? Mr. Chairman? I think I have a little time left.

The CHAIRMAN. The Chair will state pursuant to the policy that was set, no member could reserve any time, but if the gentleman is seeking more time, he can request unanimous consent, since he has already been recognized once on the amendment.

Mr. DENNIS. I appreciate that, and if I could have it, I would like to ask the gentleman from Maryland, Mr. Sarbanes, a question.

The CHAIRMAN. Well, without objection.

Mr. DENNIS. Thank you, Mr. Chairman.

I would like to ask the gentleman this: Do you subscribe to Mr. Railsback's explanation of the meaning of his amendment as to responsibility of the President for third person's actions, or do you still feel that his amendment will support your own theory on that subject as announced by you yesterday?

Mr. SARBANES. Well, as I understood the last response, which the gentleman from Illinois, Mr. Railsback, gave, I thought that was a proper elaboration of his amendment. As I understood it, part of what we have been discussing is this whole concept of the Madison superintendency theory, and I think this is very clear with respect to that

proposition, and that proposition is not contained in this article as a potential premise.

Mr. DENNIS. If I understand your answer, then you feel that Mr. Railsback's version comports very well with your own, as advanced before the amendment.

Mr. SARBANES. Well, I must confess to the gentleman from Indiana that I did not pay the close attention to the full colloquy between Mr. Railsback and Mr. Wiggins that I should have in order to respond definitively to the question that he has just put to me, and I apologize for that.

But, it is my impression that the last response which I heard Mr. Railsback give seemed to me a satisfactory elaboration of this amendment.

Mr. DENNIS. Well, I am not sure whether the gentleman are together or not, but if you are together with the gentleman from Illinois, or if he is together with you, why, since I did not like your version very well before, I am not persuaded that his is much different or much better.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois.

All those in favor of the amendment, signify by saying aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The ayes appear to have it. The ayes have it and the amendment is agreed to.

The gentleman from Illinois?

Mr. RAILSBACK. Mr. Chairman, I have a conforming amendment if I can find it. Can it be read?

The CHAIRMAN. The clerk will read the amendment.

The CLERK [reading]:

On page 1, line 18 on the Sarbanes substitute beginning at the third paragraph, strike out the following: "The means used to implement this policy have included one or more of the following:" and insert in lieu thereof the following new language: "The means used to implement this course of conduct or plan included one or more of the following:"

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. The gentleman is recognized for 5 minutes.

Mr. RAILSBACK. Mr. Chairman, I think the language speaks for itself and I am not going to belabor it.

The CHAIRMAN. The question is on the amendment offered by the gentleman.

All those in favor please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The ayes have it and the amendment is agreed to.

I recognize the gentleman from Alabama, Mr. Flowers.

Mr. FLOWERS. Thank you, Mr. Chairman. I have an amendment at the clerk's desk.

The CHAIRMAN. The clerk will read the amendment.

The CLERK. Do I understand, Mr. Flowers, that this is the amendment No. 2 in the general list of amendments?

Mr. FLOWERS. That is correct.

The CLERK [reading]:

Strike paragraph 2 of the Sarbanes substitute.

Mr. FLOWERS. Mr. Chairman, I offer this amendment having no fear that I will be unable to explain what it means to any of my colleagues on the panel, and hoping that they fully understand what it means, and I am certain they do. And I offer it not in any dilatory manner, but as a device to elicit from members of the panel or staff specifics of what charges, what information, what evidence do we have that would support paragraph 2. Are we capable of proving satisfactorily and in a clear and convincing manner the allegations of subparagraph 2 on page 2 of article I of the Sarbanes substitute.

I think that the proof aspect of it is vitally important, and remembering the comments made last evening as to the notice that the President is entitled to, this will likewise serve a vital function along those lines.

So, I make this motion to strike and I ask staff, Mr. Doar, or any member of the committee, I am prepared to yield to them if they can provide me with the evidence to support this allegation in subparagraph 2.

Mr. WIGGINS. Would the gentleman yield for a question?

Mr. FLOWERS. I yield for a question.

Mr. WIGGINS. In all due respect, it should be the gentleman that has in his mind now the evidence. He should not be seeking it from staff. We are about ready to vote, and you have indicated apparently a tendency to vote on what you have in your mind. Tell us what you are thinking about to justify this charge. Do not refer to staff. They do not have to vote.

Mr. FLOWERS. I would remind the gentleman that I made a motion to strike the subparagraph, not in support of the subparagraph, and I yield to the gentleman from Maine.

Mr. COHEN. I thank the gentleman for yielding, and want to commend him for making this motion, as I will commend Mr. Sandman for making a similar motion last evening.

I share the belief that fundamental fairness requires that we articulate the operative facts upon which the House intends to rely if and when it votes to take this matter to the Senate for trial.

I think Mr. Latta made an awfully impressive and important point last night by engaging in some demonstrative evidence when he stacked up those 8,000 or 9,000 pages of documents which we have had during the past 6 months, because I doubt whether the House Members can read, digest, and comprehend that material within a period of 10 days, and we have an obligation to pinpoint, not only for the President, but on behalf of the Members of this full House the exact facts upon which we intend to rely.

Pursuant to that, I think the following factors should be included and will be included under this particular subparagraph.

Almost immediately after the Watergate break-in, information and evidence regarding illegal activities began flowing into the White House. Almost without any exception, this information was withheld from the investigators.

Specifically by June 19, 1972, John Ehrlichman, whom the President had placed in charge of investigating the Watergate for the



White House, had learned that Mr. Liddy was involved in that break-in, and that it was a CRP, Committee to Reelect, operation. Mr. Haldeman, Mr. Mitchell, Mr. Mardian, Mr. LaRue, were also aware of this information.

Specifically, these facts were withheld from the Attorney General and other investigators.

At the same time, Liddy was retained for well over a week as counsel to the Finance Committee To Reelect the President, even after Mr. Mitchell knew of his own involvement.

Specifically, by June 20, 1972, important physical evidence had turned up within the White House relating to the break-in. These documents included materials relating to the Liddy plan, Mr. Segretti's activities, other political intelligence activities located in Mr. Haldeman's office and files and a White House telephone directory containing Howard Hunt's name and Hunt's employment record showing that Hunt was not terminated from the White House payroll officially. None of these documents were turned over to the investigators. The memoranda from Haldeman's office were shredded. The telephone directory was changed and the employment records were altered.

On June 19, I think it would be important to recall that the President spoke with Mr. Colson to determine what Hunt's status was. On June 20, we should also remember and remind ourselves that a conversation was held between Mr. Haldeman and the President during which they discussed the Watergate break-in, 18½ minutes of which has been erased.

On June 20, a phone call was placed by the President to Mr. Mitchell on a phone that was not hooked up to a tape recording system, but which the President dictated a memorandum to himself that evening. During that, or in that memorandum, is contained the recitation by Mr. Mitchell that he apologized to the President for Watergate, saying he was sorry he had not better policed his men. Mitchell's acknowledgement that his men were involved was not passed on to investigators.

And you will recall that the President also stated publicly that Mitchell's statement that there was no legal or ethical responsibility for the break-in in the White House or the Committee to Reelect was endorsed as of June 22.

Specifically, on June 23, 1972, Haldeman and Ehrlichman met at the President's direction with the need of the FBI and the CIA, Patrick Gray and Vernon Walters, and despite the fact that Haldeman and Ehrlichman were aware that there was CRP involvement in the Watergate break-in, they did not tell this to Mr. Gray and Mr. Walters. Rather they suggested, despite Helms' assurances that there was no CIA involvement, further FBI investigations of the Dahlberg and Ogarrio checks might uncover CIA activities.

On June 28, 1972, Mr. Ehrlichman and Dean delivered certain documents from Mr. Hunt's safe to the FBI Director Gray.

Specifically—

The CHAIRMAN. The time of the gentleman has expired.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. The time of the gentleman from Alabama has expired.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. Mr. Donohue.

Mr. DONOHUE. I think the gentleman from Maine is making a very important statement and, therefore, I yield whatever balance I have of my time for him.

The CHAIRMAN. The gentleman is recognized for 5 minutes.

Mr. COHEN. Referring to June 28, Mr. Ehrlichman and Mr. Dean delivered certain documents from Hunt's safe to Director of the FBI, Gray. They told him that although the White House wanted to say that it had turned everything from Hunt's safe over to the FBI, the documents "should never see the light of day" and Gray later destroyed those documents.

Specifically, on July 5, 1972, Mitchell was interviewed by FBI agents investigating the Watergate break-in. Although Mitchell has admitted that he had been told of Liddy's involvement, he did not give this information over to the agents.

Specifically, John Dean reported to Haldeman and Ehrlichman that payments to the Watergate defendants during the summer of 1972 were being made through Mr. Kalmbach, the President's personal attorney.

Specifically, by the middle of September Mr. Kalmbach had delivered \$187,000 in cash to the defendants or their attorneys.

During the summer of 1972, Mr. Dean and others in the White House were told of perjury and false statements by Magruder and Porter. This information was also withheld from proper investigative authorities, and also I call your attention, Mr. Doar and Mr. Jenner and members of the committee to that September 15, 1972 conversation the President had with Mr. Dean during which time he told Mr. Dean that he had done a good job in plugging the leaks that were springing up here and springing up there.

Specifically on March 13, 1973, the President was told that Mr. Strachan had lied to investigators.

Specifically the President, who bears the ultimate responsibility for the enforcement of our laws, did not report this to the Attorney General or to the Director of the FBI.

On March 21, 1973, the President was told of perjury by Magruder and Porter before the Watergate grand jury. Specifically the President did not direct nor did he report this to the Attorney General or the Director of the FBI.

Specifically, John Dean told the President of the complicity of his associates in the Watergate break-in and coverup on March 21, 1973. On March 23, 1973, the President telephoned Attorney General Kleindienst during the course of a meeting with Haldeman, Ehrlichman, Mitchell and Dean. Specifically the President only instructed Kleindienst to begin working with Senator Howard Baker for the President's position with respect to the upcoming hearings before the Senate select committee.

On March 23, 1973, and March 25, 1973, the President spoke by telephone with Attorney General Kleindienst. Specifically, the President did not disclose any of the relevant material or information which he possessed with respect to the Watergate matter to the Attorney General at any time during the course of these conversations.

On March 23, 1973, the President telephoned Acting Director L. Patrick Gray. Specifically, the President told Gray that he was aware of the beating that Gray had taken during the confirmation

hearings and he believed it to be unfair, but specifically he reminded Gray that he had told Gray earlier to conduct a thorough and an aggressive investigation. Specifically, the President did not tell Gray of the information he had received from Dean on March 21, 1973, or any of the other relevant and material information he had in his possession.

Specifically once again, on April 15, 1973, the President met with Attorney General Kleindienst who reported to the President that the prosecutors had evidence implicating Mr. Mitchell, Dean, Haldeman, Ehrlichman, Magruder, and Colson and others in the Watergate matter. Specifically, the President did not tell Kleindienst that he had previously been given this information by Dean.

Specifically on April 15, 1973, the President met with Petersen, who further reported on the information the prosecutors had from Dean and Magruder. The President did not disclose to Petersen the information that Dean had discussed with the President on March 21, 1973.

In addition, I would also point out to my colleagues that the President told Mr. Petersen to stay away from the break-in of Dr. Fielding's office because it was a matter of national security.

On April 25 and 26, 1973, Mr. Haldeman listened to White House tapes to ascertain the contents of the March 21, 1973, conversation among the President, Haldeman, and Dean. Neither the existence of these tapes nor the fact of Haldeman having listened to them were ever revealed to proper investigative authorities even though Mr. Haldeman was then a suspect, and very much under investigation.

Finally, between April 15, 1973, and April 30, 1973, the President spoke on at least 27 occasions with Mr. Petersen regarding the Justice Department Watergate investigation. The President did not inform Petersen of the White House taping system or any of the information he had received from White House officials regarding their criminal involvement in the Watergate matter.

The CHAIRMAN. The time of the gentleman has expired.

Mr. DENNIS. Mr. Chairman?

Mr. SANDMAN. Mr. Chairman?

The CHAIRMAN. The time of the gentleman from Massachusetts has expired.

Mr. SANDMAN. Mr. Chairman?

The CHAIRMAN. Mr. Sandman is recognized.

Mr. SANDMAN. Thank you, Mr. Chairman. I shall not use but seconds, and may I say to my friend from Alabama, if you were to stand on your head and do the fanciest of tricks, you would have 12 votes, no more. And there is no point in the continuation of this kind of an argument. I agree with you with all my heart, but you are going to have a far better forum on another day over in the House where we both sit.

So, please, let us not bore the American public with a rehashing of what we have heard. We went through this for many hours yesterday, and to those who favor keeping the Sarbanes substitute as it is, you've got 27 votes. Let's go on with our business.

I yield back my time.

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. I recognize the gentleman from Maryland.

Mr. HOGAN. Mr. Chairman, it seems that my good friend from New Jersey, Mr. Sandman, is carrying water on both shoulders, and I say this kindly. He subjected all of us yesterday to belabored arguments about the necessity for specificity. Now, he convinced a number of us that he is right. We should have specificity. So, what we are involved in now is not an effort to embellish, to exaggerate the narrative material which almost all of us are familiar with in a general way. We are trying to be responsible and specifically support every item in the articles of impeachment, with not supposition, not rumor, but specific facts to support those charges.

Now, I would have thought that the gentleman from New Jersey would be applauding this effort. Because of his eloquence yesterday he convinced us of the rightness of his arguments, so I am very surprised now that he is saying that we are just wasting our time.

Mr. SANDMAN. Would the gentleman yield?

Mr. MARAZITI. Would the gentleman yield?

Mr. HOGAN. I will yield to both gentlemen from New Jersey, but Mr. Sandman, whose name I used first.

Mr. SANDMAN. Well, I am certainly not carrying water on both shoulders. What you are doing today is not any more definitive today than it was yesterday because you are not adding one blessed word of clarification to the articles of impeachment. All you are doing is rehashing the same narrative that the public was exposed to yesterday for a dozen hours and this is what I think we should say.

Mr. HOGAN. Well, I would say to the gentleman that I think the presentation today is strikingly dissimilar to the statements made yesterday to which I personally took exception. I think that we should stick specifically to the facts and the evidence and I think that that is what has been evolving here today and I will—

Mr. MARAZITI. Will the gentleman yield?

Mr. HOGAN. I will yield to my other friend from New Jersey, Mr. Maraziti.

Mr. MARAZITI. Thank you, Mr. Hogan, for yielding.

Let me say that Mr. Sandman has stated the position that I had intended to state, that the specific point is this, that what we have asked for and what he has asked for is including the allegations in the articles of impeachment.

Now, we have a recitation of facts. All well and good. I have no objection to it. But I am saying—I am not talking about facts or evidence. I am talking about allegations that ought to be included in the articles of impeachment, not a recitation here. If you want a recitation here, fine, but if these are the allegations, put the allegations in the articles of impeachment so we know what we are voting on, so that the respondent knows how to defend.

Mr. HOGAN. I would say to my friend from New Jersey that he is—

Mr. RAILSBACK. Mr. Chairman—

Mr. HOGAN [continuing]. That he is free to offer amendments to the Sarbanes substitute or to the Donohue resolution, inserting in the kind of specificity, to use a much worn word, that he desires.

We have advice from our expert counsel that it is not necessary.<sup>1</sup> It

<sup>1</sup> On Aug. 6, 1974, in a letter to Chairman Rodino, Mr. Jenner clarified his statements concerning the function of a Bill of Particulars in an impeachment proceeding. The text of Mr. Jenner's letter is printed at pages 561, 562 of this volume.

is my own feeling that it is not necessary to have it in the impeachment resolution itself, although I do agree that we have a responsibility to shore up the allegations in the impeachment resolution with factual evidentiary material and that is the effort in which we are now engaged.

Mr. SARBANES. Will the gentleman yield?

Mr. HOGAN. I yield to the gentleman from Illinois, Mr. Railsback.

Mr. RAILSBACK. Mr. Doar, I am wondering if the staff, pursuant to our discussions yesterday, is preparing in effect what amounts to a bill of particulars?

Mr. DOAR. We are. We are; yes, we are, Mr. Congressman.

Mr. RAILSBACK. You are, and are there going to be specific references to the item within each article?

Mr. DOAR. Yes.

Mr. RAILSBACK. Then, I am inclined frankly, Mr. Chairman, to agree with Mr. Sandman that perhaps this is all a waste of time. In other words, I think we do know how we are going to vote. Is the bill of particulars going to be submitted to us anyway for our approval or disapproval?

Mr. DOAR. Well, I do not know what plans the chairman has. This was—as I indicated yesterday, Mr. Congressman, this would be included as part of the proposed report.

Mr. RAILSBACK. I thought Mr. Cohen did a fine job in laying out a lot of facts and I thought it was an excellent presentation. I just wonder if perhaps this should not be done in another way so that we can move along.

Mr. DENNIS. Mr. Chairman——

Mr. HOGAN. I think I have the time. I yield to the gentleman from Indiana and then to the gentleman from Mississippi.

Mr. DENNIS. I thank the gentleman for yielding. I am really seeking recognition to speak on my own time on the amendment.

Mr. HOGAN. I yield to the gentleman from Mississippi.

Mr. LOTT. I have one quick question, then.

Mr. Doar, when will we get this bill of particulars?

Mr. DOAR. Well, Mr. Congressman, as I say, it was our idea that we would prepare this material as part of the proposed committee report and it would be up to the committee as to how that would be handled.

Mr. DENNIS. Will the gentleman yield?

The CHAIRMAN. The time of the gentleman from Maryland has expired. The gentleman from Indiana.

Mr. DENNIS. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, the parliamentary scenario we see today whereby all those who were against specificity yesterday want to recite it today, albeit not put it in the charges, is kind of interesting, but aside from that, it is sort of refreshing to talk a little bit about the facts.

I listened carefully to my good friend from Maine, Mr. Cohen, and he says, for instance, by June 19, Ehrlichman had learned that Liddy was involved.

Did Ehrlichman tell the President he had learned it? There is no evidence he ever did. Did Liddy tell the President? Certainly not. The gentleman says Mitchell had learned something. Did Mitchell tell the

President what he had learned? No evidence of it whatsoever at that time.

You do not get anything involving the President in the gentleman's recital until pretty far down the line.

Now, the first thing you get about the President is the statement that he made on a dictabelt that McCord said he was sorry he had not disciplined his men better. Is that news? McCord was one of his men and McCord was in jail.

Mr. COHEN. Will the gentleman—

Mr. DENNIS. No; I will not yield.

Mr. COHEN. Mr. Mitchell.

Mr. DENNIS. Mr. Mitchell—

Mr. COHEN. Mr. Mitchell.

Mr. DENNIS. Mitchell—McCord was Mitchell's man. Mitchell knew McCord was arrested. He did not have to reveal anything that was not in the newspapers. And he said he was sorry he had not disciplined the people. For all we know, he may have been talking about McCord. There is no significance to that at all.

Now, you talk about Dean. You talk about Kalmbach. You talk about Mitchell. You talk about Ehrlichman. Where do you get the President?

Let me ask you a question. Who had a motive to cover anything up when this happened? There is not any evidence at all that the President knew anything about this Watergate break-in ahead of time. I think we are all pretty well agreed on that. Now, it happened. Who has a motive to cover it up? The worst thing that can happen to the President is to lose an election which by that time he knew he could not lose no matter what he did because you gentleman over there were going to hand it to him by McGovern being obviously the successful candidate by that time. So he did not need to worry about that.

But Ehrlichman had something to worry about because he was involved in the Plumbers and he was involved in the Fielding break-in, and he knew if you started to look into Watergate and you found out that these boys had been in the Plumbers and that they had been out in California, were likely to get back to him.

Mitchell had something to worry about because he had known about the surveillance plans for the Democratic Committee and according to some of the evidence, had OK'd it ahead of time.

Haldeman did not have quite as much, but he, too, had something to worry about because he had had these political reports and he had \$350,000 there to play with. And he had some things to be concerned about. But at that point the President really has nothing. So why should he be bothered to cover up?

All right. You go down the line a little bit further. The President learns nothing until March 21 or maybe a little bit on March 13. Now, it says he is talking to Petersen and he does not tell him what he learned on March 21. Well, from April 6 on, the President and Petersen both knew that Dean is singing like a canary to the U.S. attorney. This was understood between them, that he was the state's evidence. They were talking back and forth. Petersen says don't fire him yet because I need this fellow. I may want to give him immunity. And so on and so forth. So there was not any need for the President to tell

Petersen anything about what Dean was saying. At that time, the U.S. attorney was getting everything Dean was saying.

If you start talking about the facts, if you start pleading the facts, you cannot hold any—very much intendment against the President except by taking the worst possible construction on everything that happens when the law is that he is entitled to the benefit of the doubt, and that is probably one of the reasons why we have not had more specificity, and remember, by April 30, all these wrongdoers are cleaned out of the White House and gone, and they have been prosecuted and they are in jail, some of them, and everybody goes up to the Senate and testifies, and so forth and so on, and I am real glad to begin to see, even if we cannot have it put in the charge like any decent charge would, what we are going to be talking about on this on the floor and on down the line, and in the Senate if you ever get it there, because the more you analyze it, the more you are going to find out how weak this case is on the facts.

Mr. EILBERG. Mr. Chairman, Mr. Chairman?

The CHAIRMAN. The gentleman from Pennsylvania, Mr. Eilberg.

Mr. EILBERG. Mr. Chairman, I have listened with great interest to the statements of the gentleman that was just made, and he talks again repeatedly about the lack of direct evidence, talks about circumstantial evidence and how vague it is, and I would like to place in the record at this point some of the cases of direct evidence so that we have at one place a number of specific examples where there is direct evidence of the knowledge and participation by the President. Some of these have been repeated before, but I will just take a few minutes to point them out.

Specifically, Colson reported that on June 17 or June 18 when the President first learned of the break-in, he threw an ashtray across the room. This is direct evidence that the President knew that either CRP or White House persons were involved.

Specifically, on June 20 after 3 days of constant activity by the President's principal assistants, Haldeman met with the President and discussed what the President thought should be done about Watergate. Haldeman's sketchy notes show that the President decided that there should be an attack for diversion. This tape was intentionally destroyed. This is direct evidence that the President was involved. It is also evidence that he must have believed the tape was incriminating.

Specifically, on June 20 the President had a conversation with Mitchell. The President made a dictabelt of this conversation. This dictabelt with the President's recollection shows that the President knew that CRP had a relationship with the burglary. Mitchell apologized for not supervising his men because the matter had not been handled properly.

On June 20, Mitchell issued a false press release denying any CRP involvement. The President because of his conversation with Mitchell, had to know this to be false. Notwithstanding this fact, the President made a statement to the press which told the public that what John N. Mitchell had said was true. This is direct evidence of the President's active participation and leadership.

On June 30, the President, Mitchell, and Haldeman had a conversation about why it made sense for Mitchell to resign. This conversation discloses that both Haldeman and the President believed that more

things might surface in the Watergate, and now was the time for Mitchell to leave before they did.

On July 6, the President failed to make any inquiry into Pat Gray's warning that his aides were mortally wounding him. This is direct evidence of the President's unwillingness to have their coverup activities brought to light.

On July 8, without any conceivable rational basis for doing so, he discussed with Ehrlichman on the beach in Key Biscayne whether clemency should be offered to the persons involved in the Watergate. This conversation can make no sense at all unless the President was involved in making decisions relating to concealment of the Watergate.

On August 29, the President made a false press release about the fact that both John Dean and Clark MacGregor were making investigations, Dean at the White House and MacGregor at the CRP. No investigation had in fact been made of either organization.

On September 15, the President sent for John Dean and told him he had done a good job and gave him directions as to how to stop the Patman committee from being effective.

I could go on, Mr. Chairman, but these are just some of the cases where the President had direct knowledge, participation, and direction.

The CHAIRMAN. I recognize the gentleman from California, Mr. Danielson.

Mr. DANIELSON. Mr. Chairman, I oppose the motion to strike.

I am not going to rehash this long list of evidentiary matters which have been so ably presented and which I think we all know almost to the point of nauseum here. But I do want to respond again to the comments, the arguments of the distinguished gentleman from Indiana, Mr. Dennis, who seems to continually feel that there is no evidence that puts this contact directly in the lap, in the mouth of President Richard M. Nixon.

I respectfully suggest if we will just go to the President's own taped transcript of September 15, 1972—and I am not going to read it, it has been read time and time again, but you will remember that talking with John Dean, that afternoon, when John Dean came back from the courthouse, he complimented John Dean on the fact that up to that time at least Dean had been very skillful. He put his fingers in the dike. He had stopped all the leaks. He had held and contained the investigation to the five actual burglars and the two surrogate burglars, the leaders of that pack, Liddy and Hunt.

Now, those were words coming out of the mouth of the President of the United States in the Oval Office, the seat of Government.

Can you tell me that he did not know what he was talking about?

Mr. DENNIS. Does the gentleman want to yield on that?

Mr. DANIELSON. If he did not—I do not yield. If he did not know what he was talking about—

Mr. DENNIS. I thought you wanted an answer to the question.

Mr. DANIELSON. That in itself is an impeachable situation. He certainly ought to know what he is talking about when he uses that language.

Let's go on, and I am not going on to February 21—excuse me—to March 21.



On February 28, 1973, another transcript from the President; Dean and the President are talking. What are they talking about? The usual thing, the Watergate coverup, only this time it is money. Money. Spell it out, pronounce it by name. And they are talking about a lot of money here. They are talking about paying off these people who were not supposed to break, who were not supposed to explain their participation in the Watergate unlawful entry and in the coverup that followed, and who are we talking about? Of course, the four Cubans, but in addition McCord and, far more importantly, E. Howard Hunt.

So what do they say? They are talking about Herb Kalmbach, and there was a much used person if I ever saw one. If anybody who heard his testimony did not have his heart go out to him, a man who was used, abused, from one end to the other, but Herb had been called in to raise the money for these burglars and the President is a little bit worried. The Los Angeles Times had been running stories on Kalmbach, and so forth, and his skin is getting a little thin perhaps. But Dean said, "No, Herb's tough now. He is ready. He is going to go through. He is hunkered down and he is ready to handle it, so I am not worried."

The President: "Yeah. Oh, well, it will be hard for him."

This is the President. "It will be hard for him because it will get out about Hunt."

What will get out about Hunt? What else was there except the payments up to that time of something like \$200,000.

The President said "I suppose the big thing is the financing transaction. They will go after that, how the money got down to the Bank of Mexico, and so forth, that kind of stuff." And, of course, Dean concurred.

Now, in February 1973—this is not March 21. You know, on March 21 the President admits he was finally told all about it. On March 21 dawn broke. All at once he was told about Watergate. But here on February 28, through some type of prognostication, he is discussing the Hunt financing transaction in which his good friend and loyal friend of many years, Herb Kalmbach, was used to raise money.

Let's move along a little ways.

On March 21, and I am not going to repeat this conversation, but on March 21 the President of the United States, speaking from the Oval Office, tells Haldeman and John Dean that John "had the right plan before the election, he contained it all, and now we have got to have a new plan from here on out."

That is March 21. And you say the President did not know what he was talking about?

Then again on March 22, just the next day, after having known, after having known about these activities since at least June 17, and out of his own mouth having known about them since June—September 15, he is talking about whom? His chief executive officer for law enforcement, the Attorney General of the United States; Richard Nixon, the President, talking to the Attorney General of the United States, Mr. Kleindienst, and he did not tell him one word about this illegal activity.

The CHAIRMAN. The time of the gentleman from California has expired.

Mr. FROEHLICH. Mr. Chairman?

The CHAIRMAN. Mr. Froehlich.

Mr. FROEHLICH. Thank you, Mr. Chairman.

Members of this committee, when we adjourned late last night, I thought we had some type of vague understanding that the proposers of the Article of Impeachment, members of the staff and other interested committee members, would get together, possibly if necessary take all day today, to work out the specifics and the details in support of the subparagraphs of article I. But as is so often the case in this committee, the signals change as the moments go by and this has not happened. But I understand now that this is a backup article, Mr. Doar. There are some specifications in back of the subparagraphs that have been prepared by staff and made available to certain members of this committee.

Is that correct?

Mr. DOAR. Some of the—there is back-up material on some of the paragraphs. We are working on all of the paragraphs.

Mr. FROEHLICH. Well, when these articles are prepared, can they be made available to all members of this committee and to the minority staff so that responses can be prepared by those that want to prepare responses?

Mr. DOAR. Well, I certainly—these were prepared at the request of particular members, at the request of the chairman, and I presented them to the chairman, but certainly it seems to me that this material should be available to all members of the committee.

I think that—I have no question about it.

Mr. FROEHLICH. Would you direct your staff to make those available to all members of the committee that want them and to the minority staff immediately?

Mr. DOAR. Certainly I will.

Mr. FROEHLICH. Thank you.

Mr. LOTT. Would you yield?

Mr. FROEHLICH. I yield.

Mr. LOTT. I thank the gentleman for yielding.

I am quite interested in the various and repeated mentions of the ashtray being thrown across the room, by the gentleman from California, by Mr. Waldie, and now by the gentleman from Pennsylvania. So, Mr. Chairman, I may want to reserve a few minutes at some later time to offer an amendment to insure that we include the President's throwing of an ashtray as an impeachable offense.

I do not understand the significance of this ashtray and why it is being repeatedly mentioned.

Now, I found the gentleman's statement from Maine most interesting and very informative, but there are several items as we went along that I feel could be rebutted. If I could have the advantage of having this material and the specifics, perhaps from Mr. Doar, it would be very helpful so that we can debate the specifics and the points being brought up in support of these various sections.

I urge the committee staff to give us this opportunity.

In many areas that were mentioned, I think again it is the aides' actions that are being referred to, not the President's. So I want to

reemphasize again, the line has got to be drawn to the President and we cannot impeach him on the basis of his aides' actions.

I thank the gentleman for yielding.

The CHAIRMAN. I recognize the gentleman from Ohio, Mr. Seiberling.

Mr. SEIBERLING. Thank you, Mr. Chairman.

I am having a little trouble with the mechanics here.

Mr. Chairman, last night Mr. Froehlich and I discussed his suggestion at least the members of the committee have before them a set of memorandum prepared by the staff, setting for the precise evidence that the staff feels supports each one of the paragraphs of this article of impeachment. And I do think that that would be a very worthwhile thing, and I understand that the staff has not yet had an opportunity to put the evidence in a definitive form that subtends these specific paragraphs.

In lieu of that, the purpose of the discussion here is to get before us for purposes of debate the evidence that we believe, those who support the articles, and that is the purpose of this discussion.

Now, I would just like to fill in a couple of items here that have been touched upon by the gentleman from Maine, the gentleman from California, but that it seems to me to be spelled out a little bit more.

Reference was made to the fact that on June 23, Mr. Haldeman and Mr. Ehrlichman met at the President's direction with the head of the FBI and the Deputy Director of the CIA, Patrick Gray and Vernon Walters, but I think that we ought to get a little more information before us on that point.

Remember that the risk that the link between the Committee to Re-Elect the President and the break-in burglars became more imminent a couple of days after the break-in. By June 22, Mr. Gray had informed Mr. Dean that the \$100 bills had been already traced to Mr. Barker's bank account in Florida and that Mr. Dahlberg and Mr. Ogarrio in Mexico had been identified, and that the FBI planned to interview them.

On June 23, Mr. Dean reported this information to Mr. Haldeman, who immediately reported it to the President. So there is no doubt that the President knows about that.

It is also undisputed that on June 23, the President directed Mr. Haldeman and Mr. Ehrlichman to meet with Director Helms of the FBI and Mr. Walters and express White House concerns and ask Mr. Walters to meet with Gray and communicate those concerns to him.

Now, what were those concerns?

Mr. Haldeman told Mr. Ehrlichman, who told Mr. Helms and Mr. Gray, that the FBI investigation was leading to important people and that it was the President's wish, because an FBI investigation in Mexico might uncover CIA activities or assets, that Mr. Walters suggest to Mr. Gray that the FBI should not pursue the matter, especially into Mexico.

Now, the facts are these, that Mr. Helms said that there was no FBI problem in Mexico—CIA problem in Mexico, that it was not involved in this at all and second, the fact is that Mr. Ehrlichman told the—told Mr. Gray not to keep the investigation away from the CIA

but to limit it to the five men who had been arrested in the break-in. In other words, keep it away from the rest of the world.

Now, immediately after the meeting with Mr. Haldeman and Mr. Ehrlichman, Mr. Walters met with Mr. Gray and expressed these concerns, and Mr. Gray agreed to hold up the FBI investigation into the Mexican connection. And that is where it stood for about another 10 days until finally Mr. Gray—Mr. Walters came over to see Mr. Gray because Mr. Gray had asked Mr. Walters to put it in writing, and at that point the CIA said, we can't put it in writing, and Mr. Walters said that the CIA was being used and so was the FBI.

Now, let's go on to later in the summer of 1972. During the summer of 1972, Mr. Dean and others were told by the FBI of the perjury and false statements of Mr. Magruder and Mr. Porter. Was this information given to the authorities? No.

Why wasn't it? I think it is reasonable to infer that this was part of the containment plan that the President later congratulated Mr. Dean for.

The CHAIRMAN. The time of the gentleman from Ohio has expired. The gentleman from California, Mr. Wiggins.

Mr. WIGGINS. I thank the chairman for yielding.

The motion on the table is to strike the language of the Sarbanes' substitute in subparagraph 2. That subparagraph is directed to the withholding of information by the President and I shall direct my remarks to that subparagraph only.

At the outset, Mr. Chairman, let's reflect what happened just a few moments ago. I think that we have pinned down absolutely that we are talking about Presidential misconduct and not the knowledge, the acts of others unless they were known to the President.

Much of the material recited to us in support of subparagraph 2 are not the acts of the President at all but, rather, the acts of others. And I am willing to concede that there are plenty of misdeeds by others, but unless we attribute them to the President by the evidence, they are not relevant to this case.

The evidence of Presidential action commences—Presidential knowledge commences on March 21, but before I mention that, let's reflect about some withholding prior to that time.

On September 15, John Dean was up to his elbows in money payments. We all know that to be a fact. Did he disclose anything about that to the President insofar as our evidence is concerned on the conversation of September 15? Did he give the President any information at that time upon which the President could act? And the answer is no.

What about February 28? John Dean is deeply involved in a criminal conspiracy to obstruct justice, according to John Dean, but what did he tell the President, speaking of withholding, on February 28? Absolutely nothing.

What about March 13, now, the next conversation with Dean? Well, there is one on the 7th too. I will not march through these but just simply emphasize that there was some withholding here, withholding by John Dean of information in his possession from the President

upon which the President might have acted had that information been conveyed to him.

Now——

Mr. SEIBERLING. Will the gentleman yield?

Mr. WIGGINS. I do not think I am going to have the time, John, and I will if I do have the time.

The conversation of the 21st has to be read in its totality, morning and afternoon, and the full context of those remarks have to be understood.

I suggest to my colleagues that the clear thrust of the afternoon conversation was that all of this information had to be presented to a grand jury. That was a Presidential decision. He had many comments indicating that that was his preferred course of action, inconsistent with the concept of withholding.

On March 27 the President sought out as an option the appointment of a Special Prosecutor to hear all of these factual allegations of John Dean. You recall he said we will let Judge Sirica appoint the Special Prosecutor and say, "Judge, let's go." Those are the President's words. That option was rejected, not to cover up but rather was rejected at the instance and request of Henry Petersen who thought it would cast unfairly upon the ability of the Department of Justice.

You recall that on March 27 or thereabouts the President announced as his policy, inconsistent with this withholding consent, that everybody would go to the grand jury and testify fully without claiming any privilege.

You recall that in the first week of April, when John Dean was contemplating going to the U.S. attorney, the President's instruction to John Dean was, don't lie, John, tell the truth when you go before the grand—before the U.S. attorney.

Now, that is an important event, ladies and gentlemen. Presidential direct knowledge that John Dean was going to tell his story and was in fact telling his story to the U.S. attorney commencing in the first week in April. So was Magruder. Those facts were known to the President. Now, that is the truth.

Thereafter, when the President is alleged to have withheld information from Henry Petersen, the head of the Criminal Division, he is withholding information according to the argument which Petersen knows already by reason of the revelations of John Dean and Magruder before the grand jury.

In terms of withholding information, ladies and gentlemen, recall that this President made a special effort to get John Mitchell, the big enchilada, as it were, to come forward and testify freely, fully, and fairly before the grand jury. This——

The CHAIRMAN. The time of the gentleman has expired.

The gentleman from California, Mr. Waldie.

Mr. WALDIE. Mr. Chairman, I yield such time as he may desire to Mr. Seiberling.

Mr. SEIBERLING. Thank you.

I would like to respond to some of the points made by the distinguished gentleman from California, Mr. Wiggins.

Mr. Wiggins mentioned that on March 13 Mr. Dean had informed the President about certain perjury that had been committed by

Mr. Strachan. I do not think I need to read all the transcript but I would simply point out that Mr. Dean told the President that Mr. Strachan knew about Watergate and yet he was "tough as nails," and that he is going to go in to the grand jury and say again that he is going to stonewall it and say I don't know anything about what you are talking about. "He has already done it twice, as you know." Mr. Dean told the President. And the President says, "Yeah, I guess he should, shouldn't he, in the interest of—well, I suppose we can't call that justice, can we. How do you justify it?" And Dean says, "Well, it is a personal loyalty with him." The President goes on and says, "Well, I'll be damned. Well, that is the problem in Bob's case, isn't it"—Bob Haldeman. "It's not Chapin then, but Strachan. Because Strachan worked for him"—Haldeman—and the President says, "Who knew better? Magruder?" And Dean says, "Well, Magruder and Liddy." And the President says, "Ahh—I see. The other weak link for Bob is Magruder, too,"—he having hired him, et cetera.

Now, this is on the 13th before, almost a week before the famous March 21 meeting. Did the President rise up in righteous indignation as he should have and say well, I am going to clean this out right now, haul them in here and we will get them on the carpet and I will have the Attorney General here, too? Mr. St. Clair asked us to consider what we would do if we were in the President's shoes. Isn't that what any law-abiding Chief Executive ought to do? But he did nothing.

Now, on the 21st Mr.—and I am going to skip over that—later on Mr. Dean told the President about the perjury of Magruder and Porter and the President did nothing about that. But then, we get to the 21st. Now, on the night of the 21st, after the two meetings with Mr. Dean, the President dictated his recollection of the events of the day and he said that Dean—and on a dictabelt—and he said that Dean felt he was criminally liable for his action in "taking care of the defendants." That is the President's own words. And that Magruder would bring Haldeman down if he felt himself—he himself was to go down, and that if Hunt wasn't paid he would say things that would be very detrimental to Colson and that Mitchell was involved.

Now, what did Mr.—what did the President of the United States do the next day? Did he go to the Attorney General and tell him all this? No. He held a meeting with Mitchell, Dean, Haldeman, and Ehrlichman to discuss the very crimes that Mr. Dean had already implicated them in and the purpose of the discussion was to discuss how to contain it. In fact, the President's last words were, after he criticized General Eisenhower because all he cared about was being clean, he said: "But I don't look at it this way. That is the thing I am really concerned with. We are going to protect our"—"our people if we can." Apparently, the Justice Department was not part of "our people" because during the course of that meeting, he called the Attorney General and did he tell him about these crimes that had been revealed about his close aides? No. He told the Attorney General to get working with Senator Baker for the President's position in the Ervin committee hearings.

Now, it just seems to me that if he really wanted to turn this matter over to the law authorities, the next day he would have taken that

dictabell, called in the Attorney General of the United States, handed it to him and said, Mr. Attorney General, do your duty.

But, he did not do that. And I would be interested, Mr. Wiggins, in what you would have to say about that.

Mr. WIGGINS. You are yielding?

Mr. SEIBERLING. I will yield. But, I cannot yield, it is the gentleman from California that has the time.

Mr. WALDIE. Mr. Chairman, I move the previous question.

The CHAIRMAN. The question is on the motion, the amendment of the motion offered by the gentleman from Alabama to strike.

All those in favor please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The noes appear to have it, and the noes have it and the amendment is not agreed to.

And the Chair will recess until 4 o'clock.

[Whereupon, at 2:41 p.m., the committee was recessed, to reconvene at 4 p.m. this same day.]

#### EVENING SESSION

The CHAIRMAN. The committee will come to order and I recognize the gentleman from Alabama, Mr. Flowers.

Mr. FLOWERS. Thank you, Mr. Chairman, and I have an amendment at the clerk's desk.

The CHAIRMAN. The clerk will read the amendment.

The CLERK [reading]:

Amendment by Mr. Flowers.

Strike subparagraph 3 of the Sarbanes substitute.

Mr. FLOWERS. Mr. Chairman, before proceeding on this, I would like to ask unanimous consent that debate on this amendment be limited to 20 minutes with the Chair allocating 10 minutes to the proponents of the subparagraph and 10 minutes to those who oppose it.

The CHAIRMAN. Without objection, so ordered. And as the Chair understands, the gentleman's proposition means that those who would seek to be recognized to speak in opposition to the amendment, whether they come from the minority side or the majority side, would be recognized as an opponent or proponent, as the case might be.

Mr. FLOWERS. That is my intention, Mr. Chairman.

The CHAIRMAN. Well, the Chair will, without objection, proceed in that fashion.

The gentleman is recognized.

Mr. FLOWERS. Mr. Chairman, thank you for this, and thank the committee for this so that we might expeditiously get along with the consideration.

I have talked with the gentleman from Virginia, Mr. Butler, about this particular subparagraph, and I would yield to him at this time, as I believe he has some material to explain about it.

Mr. BUTLER. I thank the gentleman for yielding.

Mr. Chairman, specifically, we are concerned at the moment with subparagraph 3. You will recall that the article I is directed to a

course of conduct or plan by the President designed to obstruct justice and that there is in addition to that a following paragraph which says the means used to implement this plan include one or more of the following. And this deals with paragraph 3 of the following which concerns itself with approving, condoning, acquiescing in and counseling of witnesses with respect to the giving of false or misleading statements to lawfully authorized investigative officers and employees of the United States and false or misleading testimony in duly instituted judicial and congressional proceedings. And I would address myself at this moment to some of the specifics supporting the above paragraph of the article.

I am assisted in this regard by the staff which have helped us in preparation of this memorandum which was mentioned this morning early by the gentleman from Wisconsin.

Specifically, on or about June 28, 1972, Jeb Magruder met with CRP Director of Scheduling Herbert Porter and asked him to prepare false testimony concerning the purposes for which cash had been disbursed to Liddy. Specifically, on July 19 and 20, 1972, respectively, Porter and Magruder falsely told FBI agents that the funds obtained by Liddy from CRP were for legal intelligence-gathering activities. Specifically, on August 10, Porter testified falsely before the Watergate grand jury as to the purpose of the \$199,000 in cash paid to Liddy. Specifically, on August 18, Magruder, after discussing his false story about the Liddy money with Dean and Mitchell, testified falsely before the Watergate grand jury. Specifically, on September 12 or 13, 1972, Magruder met with Mitchell and Dean to plan a false story regarding certain meetings among Mitchell, Magruder, Dean, and Liddy in early 1972. Specifically, Magruder thereafter testified falsely about the meetings before the Watergate grand jury.

Now, I would direct your attention to page 86 of our transcript of the testimony in which it shows that on March 21, during his morning meeting with Dean, the President was told of the perjury by both Magruder and Porter. Dealing with the top of page 87, the President says, "Who?" and this deals with something preceding it, and I won't burden you with that. It talks about Mitchell, and then Dean says:

Mitchell: I don't know how much knowledge he actually had. I know that Magruder has perjured himself in the grand jury. I know that Porter has perjured himself, uh, in the grand jury.

And the President says, "Porter [unintelligible]," who is that, in effect, and "he is one of Magruder's deputies." And the President says, "Yeah."

Then, on March 13, 1973, Dean told the President directly that Strachan's denial of prior knowledge of the Liddy plan was false and that Strachan planned to stonewall again in the future.

And I call your attention to page 70 of our transcript, the prepared transcript for the committee. Dean says:

Well, Chapin didn't know anything about the Watergate, and—

PRESIDENT. You don't think so?

DEAN. No, absolutely not.

PRESIDENT. Did Strachan?

DEAN. Yes.

PRESIDENT. He knew?

DEAN. Yes.



PRESIDENT. Well, then, Bob knew. He probably told Bob, then. He may not have. He may not have.

DEAN. He was, he was judicious in what he relayed and, uh, but Strachan is as tough as nails.

PRESIDENT. What'll he say? Just go in and say he didn't know?

DEAN. He'll go in and stonewall it and say, "I don't know anything about what you are talking about." He has already done it twice, as you know, in interviews.

PRESIDENT. I guess he should, shouldn't he, in the interests of—why? I suppose we can't call that justice, can we? We can't call it [unintelligible].

DEAN. Well it, it—

PRESIDENT. The point is, how do you justify that?

DEAN. It's a, it's a personal loyalty with him. He doesn't want it any other way. He didn't have to be told. He didn't have to be asked. It just is something that he found is the way he wanted to handle the situation.

PRESIDENT. But he knew? He knew about Watergate? Strachan did?

DEAN. Uh-huh.

PRESIDENT. I'll be damned. Well, that's the problem in Bob's case, isn't it. It's not Chapin then, but Strachan—'cause Strachan worked for him.

DEAN. Uh-huh.

The CHAIRMAN. The gentleman has already consumed 5 minutes.

Mr. BUTLER. Mr. Chairman, may I have 5 minutes more to speak in opposition to the motion?

The CHAIRMAN. I thought the gentleman was speaking in opposition to the motion?

Mr. BUTLER. I was, but I thought I was on Mr. Flowers' time, and he is the proponent of the motion.

Mr. Chairman, I will take my 5 minutes wherever I may, but I would—

The CHAIRMAN. If the gentleman is seeking 5 more minutes, the gentleman will be recognized for the 5 minutes, and that will consume the 10 minutes in opposition to the amendment.

Mr. BUTLER. Well, we will have to live with that, Mr. Chairman.

Returning now, if I may, I would like to emphasize that the procedural aspects of these proceedings are not without their levity, and I consider this an extremely serious matter, and there is, indeed, extensive evidence which I would, given the time, enlarge upon. I am going through my prepared remarks, and I will conclude, and I will let you know when my time has run out.

But, it goes on for, at this moment, some 13 pages, and it extensively develops, with specific, whatever that word is, the point which this paragraph is addressed to; the approving, the condoning, the acquiescing in and the counseling of witnesses with respect to false testimony. It is a grave matter, and I regret that we have chosen to limit the time, but I will do what I can with what I have.

Specifically, on March 21, 1973, the President instructed Dean and Haldeman to lie about the arrangements for payments to the defendants. And in this regard, I call your attention to page 119 of our transcript. I think we have probably been over this some little time before, but it is relevant to this particular point dealing with the Cuban committee.

PRESIDENT. As far as what happened up to this time, our cover there is just going to be the Cuban Committee did this for them up to the election.

DEAN. Well, yeah. We can put that together. That isn't, of course, quite the way it happened, but, uh—

PRESIDENT. I know, but it's the way it's going to have to happen.

DEAN. It's going to have to happen [laughs].

And I direct your attention also to page 120 of the transcript which follows specifically on March 21, also the President told Haldeman and Dean—

PRESIDENT. That's right. That's right.

HALDEMAN. You can say you forgot, too, can't you?

DEAN. Sure.

PRESIDENT. That's right.

DEAN. But you can't—your—very high risk in perjury situation.

Now, this is on page 120 of the transcript. I think I will not burden you too much with that at the moment because I am running out of time.

Specifically, the President and Dean discussed how Magruder's perjury problem was helpful in making him keep his story straight. And that is on page 123 of our transcripts. And Dean says to the President:

Once we, once we start down any route that involves the criminal justice system—

PRESIDENT. Yeah.

DEAN. You've, you've got to have full appreciation of there's really no control over that.

PRESIDENT. No, sir.

DEAN. While we did, we have a, an amazing job of—

PRESIDENT. Yeah, I know.

DEAN. Keeping the thing on the track before.

PRESIDENT. Straight.

DEAN. While the FBI was out there all that—and that was, uh, only because—

PRESIDENT. Right.

DEAN. I had a [unintelligible] of where they were going.

PRESIDENT. [Unintelligible] right. Right. But, you haven't got that now because everybody else is going to have a lawyer. Let's take the new grand jury. Uh, the new grand jury would call Magruder again, wouldn't it?

DEAN. But, based on what information it would? For example, what happens if Dean goes in and gives a story, you know, that here is the way it all came about. It was supposed to be a legitimately operation and it obviously got off the track. I heard of these horrors, told Haldeman that we shouldn't be involved in it.

PRESIDENT. Yeah, right.

DEAN. Then Magruder's going to have to be called in and questioned about all those meetings again, and the like. And it begins to—again, he'll begin to change his story as to what he told the grand jury the last time.

PRESIDENT. Well—

DEAN. That way, he is in a perjury situation.

HALDEMAN. Except, that's the best leverage you've got on Jeb—is that he's got to keep his story straight or he's in real trouble.

DEAN. That's right.

And, of course, this conversation was between the President and Dean and Haldeman.

Specifically, at the March 27 meeting between the President, Haldeman, and Ehrlichman, the following discussion took place, and this comes from the unedited, or the edited transcripts which have come to us from the White House. And I refer you to page 350 of that transcript if you will.

HALDEMAN. Let's go another one. So you persuade Magruder that his present approach is (a) not true; I think you can probably persuade him of that; and (b) not desirable to take. So he then says, in despair, "Heck, what do I do? Here's McCord out here accusing me." McCord has flatly accused me of perjury—he's flatly accused Dean of complicity. Dean is going to go, and Magruder knows

of the fact that Dean wasn't involved, so he knows that when Dean goes down, Dean can testify as an honest man.

PRESIDENT. Is Dean going to finger Magruder?

HALDEMAN. No, sir.

PRESIDENT. There's the other point.

HALDEMAN. Dean will not finger Magruder but Dean can't either—likewise, he can't defend Magruder.

PRESIDENT. Well——

HALDEMAN. Dean won't consider [unintelligible] Magruder.

The CHAIRMAN: The gentleman will finish his sentence.

Mr. BUTLER. Well, I will finish what I was reading of the statement by Mr. Haldeman in this quotation, if I may.

But Magruder then says:

Look, if Dean goes down to the grand jury and clears himself, with no evidence against him except McCord's statement, which will not hold up, and it is not true. Now, I go down to the grand jury, because obviously they are going to call me back, and I go to defend myself against McCord's statement, which I know is true. Now I have a little tougher problem than Dean has. You are saying to me, "Don't make up a new lie to cover the old lie." What would you recommend that I do? Stay with the old lie and hope I would come out, or clean myself up and go to jail?

The President, to Haldeman, "What would you advise him to do?"

The CHAIRMAN. The time of the gentleman has expired.

Mr. BUTLER. Thank you.

The CHAIRMAN. The Chair now recognizes the gentleman from California to speak in support of the——

Mr. WIGGINS. Thank you, Mr. Chairman.

We have started from an understanding of what the language is before us to be stricken, and I want to read the operative words, at least.

These are charges against the President, mind you, approving, condoning, acquiescing in and counseling witnesses with respect to the giving false or misleading statements to lawfully authorized investigative officers, and so forth, including congressional proceedings.

Note, if you will, that the language is couched in terms of giving false testimony in the future. That is an important thing to remember because the perjury of Magruder and Porter occurred prior to March 17, well prior to March 17, and the President did not learn about it until March 17, and so I ask the obvious question, can you counsel the giving of perjured testimony after it is already done?

Well, the answer to that is no. The President is just learning about it on the 17th, and a fair reading of the conversation between the President and John Dean on that occasion, my recollection is it is the 13th rather than the 17th, but on that occasion is that the President is learning about prior perjury as distinguished from counseling future perjury, which is the essence of the allegation before us.

In addition to that, my good friend has just read several statements from the transcript of March 21 in which John Dean is speaking to the President and the President to John Dean about certain aspects of the then unfolding Watergate case.

The question is, which we have to decide and to decide on the basis of evidence, convinced as we must be, that it is clear and convincing whether the President counseled anybody, to go before a duly constituted investigative agency and not tell the truth.

Well, now, I can only submit the record to you ladies and gentlemen and ask that you read it again, those specific incidents called to our attention by Mr. Butler, and ask that you read it fairly and resolve that question. Did the President indeed counsel anybody to commit perjury?

Well, I can only say that I am satisfied, and I hope that you will be satisfied upon a rereading of that record, that the allegation is not true.

There are other aspects, however, to this case which have been mentioned from time to time in the context of the President counseling false testimony.

You will recall, ladies and gentlemen, that there came a time in the course of this testimony when we learned that the President advised various witnesses about what other witnesses were testifying to before grand juries, the assumption being that he was counseling them to phony up a story to counter the testimony which was then being received.

I am talking specifically about Herb Kalmbach, and you are well aware of that situation, Tom. I am also talking specifically about Magruder. The backdrop, of course, was that John Dean was then testifying before the U.S. attorneys. Magruder—strike that—LaRue, now a broken man, was offering testimony before the U.S. attorneys. The President said that others have to be advised as to that testimony, the implication being that they would concoct a story to lie.

Well, let me within my remaining moments say that there are not less than two reasonable constructions to be drawn from that. One is that they phony up a story to lie. Another is that they not lie, that they conform their story with that being offered before the U.S. attorneys so as to avoid a perjury situation, even unintentionally.

The notion that someone should be advised about the context of someone else's testimony is wholly consistent, ladies and gentlemen, with developing the truth, and it is totally unfair I believe to suggest that that was part and parcel of a plot to develop the untruth.

Now, we know here as the lawyers for the House that if you have these two reasonable possibilities, and I suggest that they are eminently reasonable, if you have these two reasonable possibilities, we must resolve that in favor of the President of the United States, the respondent, and not draw the adverse inference simply because some amongst us are relatively suspicious as to whatever the President does.

One final comment and then I think my 5 minutes are up. Are they up now?

The CHAIRMAN. The time of the gentleman has expired.

Mr. WIGGINS. All right. Thank you, Mr. Chairman.

Mr. HUTCHINSON. Mr. Chairman?

The CHAIRMAN. Mr. Hutchinson.

Mr. HUTCHINSON. I will yield additional time to Mr. Wiggins.

Mr. WIGGINS. Thank you, Mr. Hutchinson.

The CHAIRMAN. The gentleman is recognized.

Mr. WIGGINS. I only wish to make one point because it has been discussed elsewhere, and that is Mr. Haldeman had the opportunity to review tapes prior to his testimony. At that time Mr. Haldeman and the President but very few others were aware of this taping system. Mr. Haldeman reviewed these tapes. The implication is being

placed in the minds of the committee that this was again part and parcel of a corrupt design so that Haldeman could tailor his testimony falsely before a grand jury.

Now, that is a suspicion alone, but let me tell you that there is another side that I think is equally defensible and that is that Mr. Haldeman reviewed that tape so as to testify truthfully to the events thereon rather than falsely. I think that is an eminently reasonable conclusion, inconsistent with this suspicious circumstance, and the President is entitled to the more favorable construction of that event.

I merely wanted to make that observation with respect to listening to the tapes and I thank the gentleman from Michigan for permitting me to amplify it.

Mr. HUTCHINSON. I thank the gentleman. Does the gentleman from Indiana desire to be recognized on this question?

Mr. DENNIS. Mr.——

Mr. HUTCHINSON. I would be happy to yield to the gentleman from Indiana.

Mr. DENNIS. I will say to the gentleman from Michigan that I think my friend from California has very adequately covered this matter and I do not really think I have anything particular to add. I yield time to him if he has anything else he wants to say.

Mr. WIGGINS. Mr. Hutchinson——

Mr. HUTCHINSON. I yield back the balance of my time.

The CHAIRMAN. The question is on the motion of the gentleman from Alabama. All those in favor of the motion please signify by saying aye. All those opposed, no, and the——

[Chorus of "ayes."]

[Chorus of "noes."]

The CHAIRMAN. All those in favor of the motion, please signify by saying aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed.

[Chorus of "noes."]

The CHAIRMAN. The noes appear to have it.

Mr. SANDMAN. I demand a tally of the vote.

The CHAIRMAN. The gentleman from New Jersey demands a roll-call vote. The clerk will call the role. All those in favor of the motion please signify by saying aye. All those opposed, no.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. No.

The CLERK. Mr. Flowers.

Mr. FLOWERS. Present.

The CLERK. Mr. Mann.

Mr. MANN. No.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. No.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. No.

The CLERK. Mr. Danielson.

Mr. DANIELSON. No.

The CLERK. Mr. Drinan.

Mr. DRINAN. No.

The CLERK. Mr. Rangel.

Mr. RANGEL. No.

The CLERK. Ms. Jordan.

Ms. JORDAN. No.

The CLERK. Mr. Thornton.

Mr. THORNTON. No.

The CLERK. Ms. Holtzman.

Ms. HOLTZMAN. No.

The CLERK. Mr. Owens.

Mr. OWENS. No.

The CLERK. Mr. Mezvinsky.

Mr. MEZVINSKY. No.

The CLERK. Mr. Hutchinson.

Mr. HUTCHINSON. Aye.

The CLERK. Mr. McClory.

Mr. MCCLORY. Aye.

The CLERK. Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Sandman.

Mr. SANDMAN. Aye.

The CLERK. Mr. Railsback.

Mr. RAILSBACK. No.

The CLERK. Mr. Wiggins.

Mr. WIGGINS. Aye.

The CLERK. Mr. Dennis.

Mr. DENNIS. Mr. Chairman, I am quite puzzled. When the author of the amendment votes "present" I hardly know what to do but I will vote, aye.

The CHAIRMAN. The gentleman made up his mind rather quickly.

Mr. DENNIS. I do that.

The CLERK. Mr. Dennis votes, aye. Mr. Fish.

Mr. FISH. No.

The CLERK. Mr. Mayne.

Mr. MAYNE. Aye.

The CLERK. Mr. Hogan.

Mr. HOGAN. No.

The CLERK. Mr. Butler.

Mr. BUTLER. No.

The CLERK. Mr. Cohen.

Mr. COHEN. No.

The CLERK. Mr. Lott.

Mr. LOTT. Aye.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. Aye.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. Aye.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. Aye.

The CLERK. Mr. Latta.

Mr. LATTA. Aye.

The CLERK. Mr. Rodino.

The CHAIRMAN. No.

The CLERK. Mr. Chairman?

The CHAIRMAN. The clerk will report.

The CLERK. Twelve members have voted aye, 25 members have voted no, and 1 member has voted present.

The CHAIRMAN. And the motion is not agreed to.

The gentleman from Alabama.

Mr. FLOWERS. Mr. Chairman, I have an amendment at the desk.

The CHAIRMAN. The clerk will read the amendment.

The CLERK [reading]:

Amendment by Mr. Flowers.

Strike subparagraph 4 of the Sarbanes substitute.

Mr. FLOWERS. Mr. Chairman, I would like the same motion that the debate on my amendment be limited to 20 minutes to be divided 10 minutes to the proponents of the motion and 10 minutes to those that oppose the motion. I ask unanimous consent.

The CHAIRMAN. Without objection, and the policy will accordingly be the same, that the 20 minutes will be divided among the proponents and the opponents evenly.

Mr. FLOWERS. Thank you, Mr. Chairman.

I have discussed at length this subparagraph with the gentleman from Maryland, Mr. Hogan, and I would yield my time to him.

Mr. HOGAN. I thank the gentleman from Alabama.

As we know, the paragraph reads

Interfering or endeavoring to interfere with the conduct of investigations by the Department of Justice of the United States, the Federal Bureau of Investigation and the Office of Watergate Special Prosecution Force.

Now, perhaps I feel the importance of this more than most because of my former affiliation with the FBI, but the fact that the President and the White House used the FBI and the CIA to thwart the investigation troubles me very deeply because if we do not have confidence in these important sensitive agencies, then the very core of our country is in jeopardy. So I am going to be very specific and my colleagues, if they so desire, can have from me later citations in the evidentiary record to substantiate the comments which I am going to make.

On June 21, 1972, Ehrlichman told Acting FBI Director Dean—Acting FBI Director Gray, that Dean would be handling an inquiry into Watergate for the White House. The following day, the 22d of June, Gray informed Dean that the \$100 bills found on the Watergate burglars had been traced to the Miami bank account of Bernard

Barker, who, as you will recall, was one of the burglars, and that Dahlberg Ogarrio had been identified as the makers of the checks and that the FBI was trying to locate these men for interview.

The following day Dean reported this information to Haldeman and Haldeman reported it to the President. We subpoenaed a tape of the conversation between the President and Mr. Haldeman and it was not given to us. But we do know from other testimony that the same day the President personally directed Haldeman and Ehrlichman to meet with CIA Director Helms and Deputy CIA Director Walters to express White House concerns and ask Walters to meet with FBI Director Gray and communicate these White House concerns to Gray.

They did meet with Helms. And Helms told Ehrlichman and Haldeman that there was no CIA involvement in the Watergate break-in and he told him that he had previously given similar assurances to Mr. Gray.

Haldeman told Helms that the FBI investigation was leading to important people and it was the President's wish, because an FBI investigation in Mexico might uncover CIA activities or assets; that Walters suggested to Gray that it was not advantageous to pursue the inquiry, especially into Mexico.

Ehrlichman's testimony subsequently was that the Mexican checks traced to this Florida bank account were discussed as a specific example of the President's concern.

Now, why were they concerned about these checks? They were concerned because these checks were a direct link from the burglars to the Committee To Re-Elect the President, and if that link had not been forged, we would not be sitting here today. So that is why they did not want the investigation to go forward into Mexico.

During or shortly after the meeting among Ehrlichman, Haldeman, Helms, and Walters, John Dean called Gray and told him that he could expect a call from Deputy CIA Director Walters. Immediately after the meeting with Haldeman and Ehrlichman, Walters met with Gray and expressed these so-called concerns. So Gray agreed to hold up the FBI interview of Ogarrio and he indicated that the FBI, however, was still going to try to locate Dahlberg.

Parenthetically, at this very time Dahlberg was meeting with Maury Stans at the Committee To Re-Elect the President while the FBI was trying to find him.

Walters, thinking that there might possibly be some CIA involvement of which he was not personally aware, checked his operatives of which he was not personally aware, checked his operatives in the field to see if there was any jeopardy to CIA activities. He found out from them that there was no jeopardy involved.

On June 26, 1972, Walters so advised White House liaison man John Dean. On the 27th of June Helms officially notified Gray that the CIA had no interest in Ogarrio. And Helms and Gray in their telephone conversations set up a meeting for the following day so the two of them could discuss the question of possible CIA interest in Watergate.

Mr. Gray reported this to Dean.

The CHAIRMAN. The 5 minutes—



Mr. HOGAN. Mr. Chairman, I now seek 5 minutes recognition on my own time.

The CHAIRMAN. The gentleman is recognized. However, the Chair would like to state that since the gentleman is speaking in opposition to the amendment and there were others who—there are others who sought to be recognized, would the gentleman be ready to yield 2 minutes to two other gentlemen? Otherwise, it is not going to—the Chair is not going to be able to recognize them within that time.

Mr. HOGAN. I will be very pleased to do so, Mr. Chairman. If the Chair would advise me at that point in the expiration of my time, I will conclude in midsentence and yield. May I continue?

The CHAIRMAN. The gentleman is recognized.

Mr. HOGAN. Mr. Gray reported this fact to Mr. Dean, that he was going to have a meeting with Helms. So on the morning of the 28th, Ehrlichman telephoned Gray and told him to cancel the meeting with Helms because he did not want the meeting to take place at which Helms would tell that there was no CIA involvement. Gray canceled the meeting.

The same day Gray instructed his FBI agents to go out and interview Ogarrio and continue to try to locate Dahlberg.

Also on the 28th Dean asked Walters if, even after knowing there was no CIA involvement, Dean asked Walters if the CIA could stop the FBI investigations of the Dahlberg and Ogarrio checks. Walters refused to do so. Since he could not use CIA to block the investigation, Dean then acted directly, called Gray and insisted that for national security reasons or because of CIA interest, that Gray's instructions to interview those two men should be withdrawn.

Gray did cancel the interviews. But a few days later, Gray called Walters and said that he would interview them unless CIA put into writing its objection. CIA refused to do so and Walters sent Gray a memo saying that CIA had absolutely no interest.

They both expressed their dissatisfaction with the way the White House was interfering with their agencies and their concern that the President's interests were not being served by his aides. These above activities were set in motion by the President, and limited the investigatory efforts of the FBI.

Now, there are other problems I was going to detail but I will not be able to but I do want to call to the attention and recollection of my colleagues the conversation whereby Gray called San Clemente and got Clark MacGregor on the phone and he said to Clark MacGregor "that I want to talk with the President about his aides trying to misuse"—these are Gray's words, not ours—"misuse the CIA and the FBI."

A few minutes later the President called Mr. Gray and did not in any way allude to any conversation he had with Mr. MacGregor or Mr. Gray's concern and congratulated Mr. Gray for doing an outstanding job in the hijacking. Mr. Gray could not contain himself any more, he blurted out, "Mr. President, your aides are trying to destroy you. They are misusing the FBI and CIA." And then Mr. Gray testified there was a perceptible pause and the President said, "Go on with your aggressive investigation, Pat." He did not even inquire

about this involvement of his aides trying to misuse the FBI and the CIA.

I only wish I had another hour to detail more specifics in this area but unfortunately, I do not and I will yield to the gentleman from California, Mr. Danielson.

Mr. DANIELSON. Mr. Chairman, at this point I wish to save time but in support of my amendment to include congressional committees, I wish to refer to and by this reference incorporate the comments I made this morning at the time of the amendment and also my comments made on the day before yesterday, July 25, with respect to the House Committee on Banking and Currency. There is further evidence in support of such activities with respect to the Senate select committee and this committee and I also incorporate them by reference. Due to the shortage of time I yield to my brother, Father Drinan.

Mr. HOGAN. I think I still have the time but I will be happy to yield to the Congressman from Massachusetts.

Mr. DRINAN. Thank you very much.

I want to point out the necessity of retaining this section because it deals with something very fundamental, that by Federal law, any person who influences or seeks to influence or intimidates or impedes any witness in any proceeding, commits a crime.

Let us take the summer of John Dean during that particular year. On June 21 he is assigned to this case and he sits first of all, with Mr. Gray and the FBI people at every single interview when people from the White House go before the FBI. Is Mr. Dean seeking to influence or intimidate or impede? He happens to be the President's counsel. And all of the people who saw Dean there, who knew, recognized that this is most unusual, especially after the President on the very day after Mr. Dean was assigned, said that the White House has had no involvement whatsoever in Watergate and the President's counsel is there, on the phone, day after day, for 2 long weeks, with Mr. Patrick Gray. Well, Dean and Ehrlichman really could write a book on how to be a double agent of the FBI.

Did he seek to—did he succeed in influencing? That is not the question. The offense is done even if he endeavors to influence. Mr. Dean was before this committee. I cannot imagine him intimidating anyone but he can influence and he can impede and he was very successful.

The CHAIRMAN. The time of the gentleman from Massachusetts has expired. All time has expired and the question is on the motion of the—

Mr. WIGGINS. Mr. Chairman, you have not recognized anybody on this side.

The CHAIRMAN. The Chair did not intentionally overlook the minority side. I do not know whether it was subconscious, but nonetheless—I yield to—I recognize the gentleman from New Jersey, Mr. Sandman.

Mr. SANDMAN. Thank you. I sure did not want to be counted out without a shot.

The thing that amuses me the most today, what a difference 24 hours makes. Yesterday they had so much testimony they were afraid to put in nine simple sentences. Now today every other word they breathe is the word "specify". Isn't that unusual? So unusual. Everything is so

specific. But they have not changed one word in the articles, have they, not a word. There has got to be a reason for this resistance. There has got to be a reason. You know what the reason is. When you tame it down to a time and a place and an activity, they do not have it. All they have is conjecture. They can tell you all about what Dean told somebody, Ehrlichman told somebody, what somebody else told somebody. This is going to be the most unusual case in the history of man. They are going to prove the whole case against the President of the United States over in the Senate with tapes and no witnesses. Won't that be unusual? And this is what it all amounts to.

Now, if I went through this thing paragraph by paragraph I could cite with great detail no Presidential involvement. They know it, you know it, and I know it.

Now, let us get down to a couple of these things, real specifics. Will we ever forget Petersen's answer to my question, the most daring question asked in the whole investigation to the Chief, the Chief of the Criminal Division of the Department of Justice? When I asked Mr. Petersen, did you receive any information whatever from the very beginning up to the present time that involves Presidential wrongdoing, that was a dangerous question and Mr. Petersen's answer was none. That is a pretty solid witness, I would say, for the President.

If you go right down the list of all nine witnesses that came before this committee, including the great John Dean, you get the same kind of testimony. So witnesses are a lot stronger than this stuff that you are hearing here today. You can take it out of context, you can play up a particular article, you can do as Newsweek did, use only half of a sentence and leave off the five most important words. It is terrible, sure it is, but you and I know as lawyers it is not the kind of evidence that is going to convict anybody.

Now, there was such a coverup here, so much of an interference, between the President and his people, is it not unusual that not in a single case did the President ask for immunity for any of them. In fact, his move was to the contrary. He did not want any of them to have any immunity. He wanted them to tell the truth and he told every one of them, tell the truth, and it is reflected in this testimony that he said that.

We can say all we want about these various things. John Dean, a man who had a mechanical memory, he could remember split seconds of what he was doing 2½ years ago, almost consistently, but he could not remember what was in the papers that he burned up, the only thing he could not remember.

Then when Hunt was involved in this thing and Hunt's safe was drilled, sounds like somebody did something they should not, does it not?

Well, what happened? John Dean was told to take all of that stuff down to the FBI. He was told to do that. And he took everything down to the FBI except the two notebooks involving him, and had information in that he said he could not remember what they said.

The Patman Commission—this is the joke of the century. You know, when you pick on a big man, everybody gets in the act. You can see what has happened here. So it was with Mr. Patman. He had as much business involving himself in this case as anyone in the audience did.

In fact, he tried a one-man investigation. You heard a little bit about that. And it was so bad that even the Democrats on that committee, which is a standing committee of the House, voted against his right to subpoena a single witness. That is the kind of jurisdiction Mr. Patman had.

So there was not any interference here that meant anything. And we can go right on down the list.

But let us get back again to the most important thing of them all. Why are these people resisting so hard to give us nine simple sentences? Why? They do not have to give us great big volumes. They do not have to give us 150 pages that Mr. Doar referred to. Just give us nine simple sentences.

The simple reason they will not—they do not have the proof. They have 40 books, but no witnesses. An unusual case, to say the least.

Now, we can talk about this as long as we want, but I think we have talked long enough.

I will yield the balance of my time to the gentleman from California, or Mississippi, I am so sorry.

Mr. Lott. Thank you, Mr. Sandman.

Just a couple of points.

First of all, with reference to this telephone conversation between the President and Pat Gray, the fact is Pat Gray did not initiate that call. The President called Mr. Gray at approximately 8:25 a.m. July 6. This all came about apparently through MacGregor and MacGregor did not meet with the President until 10 a.m. A lot has been said about what was said in that conversation.

After Gray raised the question that the President's staff was trying to mortally wound the President, what did the President do? He paused perceptibly, and I think this is a natural—it shows logically that this was a matter of first impression and concern and he did not make any kind of comments about coverup. He told him, you just keep going right ahead with your thorough investigation, or some words to that effect.

Now, there is no hard evidence that the President ever attempted to interfere with the course of the FBI's investigation. At no time did he, Haldeman or Ehrlichman state that the investigation should be halted, and I refer you to book 2, page 383. They merely expressed a concern, and a legitimate one, I think, at that time that the trail not lead to exposure of CIA or Plumbers' activities which would harm national interest. And this is important.

Before and after that concern was expressed there was no knowledge or no involvement by the President in the future attempts to limit the investigation. There is no evidence that the theory, this Watergate break-in was a CIA operation, was discussed before Gray told Dean the FBI was considering this possibility on June 22. Although Gray had checked with Helms before talking to Dean and received a tentative denial, it does not appear that he passed this information on to Dean. I refer you to book 2, page 339.

Therefore, there is no evidence that the President was aware of any CIA denial at the time he was informed of possible CIA involvement.

Now, it is very difficult to argue to these specifics that we are being given, we hear them for the first time here and there are replies to these, but we have to try to go and find the reply on the spur of the

moment. It is important to differentiate, I think, between the President's expressed concern and the subsequent actions taken by his assistants without his knowledge.

Once again, you must look at whether this is the assistants, the aides, doing these things, or the President.

Mr. HOGAN. Will the gentleman yield?

Mr. LOTT. I think Mr. Wiggins—

The CHAIRMAN. There are 3½ minutes remaining out of the 10 minutes. Mr. Wiggins is recognized.

Mr. WIGGINS. Thank you, Mr. Chairman. I will try to be succinct.

It is instructive to remember, ladies and gentlemen, that in the form of this article we are talking about Presidential misconduct, Presidential misconduct, and not misconduct of others unless it can be logically and appropriately tied to the President.

I wish to speak rather rapidly to the matter of CIA. There are two Presidential acts within the time frame of June 23 to July 6, and that is the time frame in which it is alleged there has been interference with the CIA.

The first act begins when the President issued these instructions as reported in our tab. The President instructed H. R. Haldeman and John Ehrlichman to insure that the FBI investigation of Watergate did not expose unrelated CIA covert activities or White House special investigative unit activities, and that the CIA and the FBI should coordinate to that end. That is a Presidential act and it is admitted.

The only other Presidential act occurred on July 6, several weeks later, and this is what the President said after being informed by Pat Gray that his aides are attempting to mortally wound the President. The President said, "Pat, you just continue to conduct your aggressive investigation."

Now, some sinister purpose is imputed because he paused briefly before he said that. But that is what he said.

Now, I want to refresh the recollection of the members as to whether or not the President's concern about CIA was justified under all of the circumstances. We remember that McCord was in fact arrested and a former CIA agent. We remember that Barker was in fact arrested and a former CIA agent, perhaps an active CIA agent. Martinez was arrested and he was an active CIA agent.

Hunt's name was in the Washington Post: Hunt was a spy for the United States, a former CIA agent, and a former member of the Plumbers' unit.

There are other facts which were called to the President's attention on June 23, all of which indicate possible CIA involvement, a theory which was supported by the FBI itself, the FBI itself believed there might be CIA involvement.

Given those facts, ladies and gentlemen, we are asked to conclude that the President corruptly, corruptly, instructed his aides to request that there be coordination between the CIA and the FBI so as not to reveal unrelated CIA covert activities.

Now, ladies and gentlemen, that is all the evidence there is in between the 23d of June and the 6th of July. There is no question that John Dean acted improperly. I am willing to stipulate to that. But that does not execute the President's instructions which were given

on the 23d of June. On that issue, ladies and gentleman, the question really is not all that close. I would think that the weight, if not the preponderance, of the evidence in favor of the President is that he acted in the public interest as distinguished from corruptly. Surely, however, there is not a clear and convincing showing that the President acted corruptly given the facts and the knowledge that he had at the time he issued the instruction.

Thank you, Mr. Chairman.

The CHAIRMAN. The time of the gentleman has expired. All time has expired.

The question now occurs on the motion of the gentleman from Alabama. All those in favor of the motion please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed, no.

[Chorus of "noes."]

The CHAIRMAN. The noes have it.

Mr. SANDMAN. Mr. Chairman, I demand a rollcall.

The CHAIRMAN. The gentleman from New Jersey demands a rollcall, and the clerk will call the roll.

All those in favor, signify by saying aye; all those opposed, no.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. No.

The CLERK. Mr. Flowers.

Mr. FLOWERS. Present.

The CLERK. Mr. Mann.

Mr. MANN. No.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. No.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. No.

The CLERK. Mr. Danielson.

Mr. DANIELSON. No.

The CLERK. Mr. Drinan.

Mr. DRINAN. No.

The CLERK. Mr. Rangel.

Mr. RANGEL. No.

The CLERK. Ms. Jordan.

Ms. JORDAN. No.

The CLERK. Mr. Thornton.

Mr. THORNTON. No.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. No.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. No.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. No.  
 The CLERK. Mr. Hutchinson.  
 Mr. HUTCHINSON. Aye.  
 The CLERK. Mr. McClory.  
 Mr. McCLORY. No.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. Aye.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. Aye.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. No.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. Aye.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. Aye.  
 The CLERK. Mr. Fish.  
 Mr. FISH. No.  
 The CLERK. Mr. Mayne.  
 Mr. MAYNE. Aye.  
 The CLERK. Mr. Hogan.  
 Mr. HOGAN. No.  
 The CLERK. Mr. Butler.  
 Mr. BUTLER. No.  
 The CLERK. Mr. Cohen.  
 Mr. COHEN. No.  
 The CLERK. Mr. Lott.  
 Mr. LOTT. Aye.  
 The CLERK. Mr. Froehlich.  
 Mr. FROEHLICH. Aye.  
 The CLERK. Mr. Moorhead.  
 Mr. MOORHEAD. Aye.  
 The CLERK. Mr. Maraziti.  
 Mr. MARAZITI. Aye.  
 The CLERK. Mr. Latta.  
 Mr. LATTA. Aye.  
 The CLERK. Mr. Rodino.  
 Mr. RODINO. No.  
 The CHAIRMAN. The clerk will report.  
 The CLERK. Mr. Chairman, 11 members have voted aye, 26 members have voted no, 1 member voted present.  
 The CHAIRMAN. And the motion is not agreed to.  
 I recognize the gentleman from Alabama.  
 Mr. FLOWERS. Thank you, Mr. Chairman.  
 I have an amendment to subparagraph 7 at the clerk's desk.  
 The CLERK [reading]:  
 Amendment by Mr. Flowers.  
 Strike subparagraph 7 of the Sarbanes substitute.

Mr. FLOWERS. Mr. Chairman, there has been no motion filed on subparagraph 5 or 6, because it is my judgment that both of these subparagraphs have been adequately covered in other evidence presented to the committee here, and in connection with subparagraph 7 I would yield to the gentleman from New York, Mr. Rangel.

Mr. RANGEL. Thank you, Mr. Chairman. I rise in opposition.

The CHAIRMAN. If the gentleman will defer, the gentleman from Alabama has to ask unanimous consent.

Mr. FLOWERS. I regret I passed over the most important thing. I ask unanimous consent that the debate on this motion of mine be limited to 20 minutes, with 10 minutes going to the proponents and 10 minutes to the opponents of the motion.

The CHAIRMAN. Without objection, it is so ordered, and the gentleman from New York.

Mr. RANGEL. Thank you, Mr. Chairman.

I rise to support this paragraph No. 7 which deals with charging the President with disseminating information received from officers of the Department of Justice of the United States to subjects of the investigation conducted by lawfully authorized investigative officers and employees of the United States for the purpose of aiding and assisting such subjects and in their attempts to avoid criminal liability.

This is merely to suggest that one of the most sacred institutions that we have in this country is the proceedings which take place in the grand jury. It shocks my sensitivity to hear certain members of this committee indicate that an inference is drawn because the President shares information that he receives from the Acting Attorney General with people that he knows are being investigated for possible indictment, where the Acting Attorney General has indicated that these people would be indicted, that we can say that the President shared grand jury information with these people that we should draw two inferences. One inference is that the President would want them to lie and conform their story to one that would avoid liability, and one of the members suggested that we should consider the fact that perhaps in this particular instance the President wanted one of his men to tell the truth.

I submit that regardless of which one of these two the President was suggesting, it was violating the secret information which should have remained in the grand jury and should never have been shared in the first instance with the President. And the President should never have used this information regardless of for what purpose to share with other people.

This is especially so when he went out of his way to tell Henry Petersen that he was going to keep that information confidential.

But, this is all a part of a plan. Most of you recall on March 21 when John Dean came to the President to talk about the cancer that was growing in the White House that the President again recalled exactly what he was being told on his dictaphone, and the President knew the people in the White House had started this conspiracy rolling. Of course, at that time it was merely to gather political intelligence. The President had remembered some of the political intelligence because CRP would give it to Magruder, Magruder would give it to Strachan,



Strachan would give it to Haldeman, and Haldeman has discussed it with the President, and we have that on a tape.

Now, just where do you get political intelligence from your opponent? The record is very clear, because the President responds, "Are we bugging Muskie, are we bugging McGovern" and the inference which I draw or "is it just the DNC."

Now, I don't know how the President would expect they would get this information because you are only a burglar if you get caught, and so when the President asked information of the Attorney General, and he directed Ehrlichman to tell Kleindienst that no White House personnel had prior knowledge of the break-in, it was strange how one member said yesterday well, they didn't have prior knowledge. Well, in other words, I will accept what the member said. I don't really believe that Liddy and Hunt called the President of the United States and said, we are going to hit on June 17.

I do believe, however, that Ehrlichman knew that, Haldeman knew, that Mitchell knew, that they had gotten enough money together for Liddy and Hunt. Liddy was transferred off the White House payroll to go to work for CRP. Hunt still had his office in the White House, and Mr. Kleindienst, who is supposed to be receiving this report for the first time, saw the head of the burglary on the golf course, and he never told the FBI.

So, the scenario which one member said, it's true they never had prior knowledge, the only prior knowledge that people in the White House did not know was when they were going to hit. But, they certainly knew when they got information whether they were in San Clemente, whether they were in Washington, D.C. or whether or not they were in Key Biscayne, that Liddy and Hunt were the people. As a matter of fact, the President says on one of the tapes that we received that he immediately suspected Colson.

Let's find out what the plan is. Most of you heard that it was suggested to Mr. Mitchell. He was the new plan, as Martha clearly pointed out, that they felt that if they could deliver Mr. Mitchell, then perhaps it would keep it away from the White House and keep it away from the Presidency. I do not know why people insist that you read the whole paragraph after you talk about the stonewall and plead the fifth amendment, because the President is saying he would rather do it another way if it is going to come out at all. But, the President concludes, to read the bottom line, that whether you stonewall, cover up, and save the plan, the last thing that he said to Mr. Mitchell is that: "You know, up to this point, the whole theory has been containment, and you know that, John, but, they are shifting now, and the important thing is to protect the people. The important thing is to go to the grand jury, get the information and report back to those people who are the suspects by Henry Petersen."

The CHAIRMAN. The gentleman has consumed 5 minutes.

I will recognize the gentleman from Iowa, Mr. Mayne, for 5 minutes.

Mr. MAYNE. Thank you, Mr. Chairman.

Much has been made here of the conversations between the President and Mr. Henry Petersen who was the Assistant Attorney General of the United States on the evening of April 16. I think that that conversation has to be taken in its proper context, and it is important

in considering this to recall the extensive examination of Mr. Petersen when he appeared in person before this committee.

Now, he is one of the relatively few live witnesses which we had. Unfortunately, that was a closed hearing. The press and the American people were not privy to that at the time. I wish very much that his testimony could have been seen, as well as later read. But, he testified that it was his understanding that under the circumstances it was entirely proper for him to give this information to the President. He testified that in his opinion, it was not grand jury information that had already been testified to before the grand jury, but had been otherwise developed by the Government, and he said that certainly such information be properly used by the President in his capacity as Chief of State, and that he fully expected the President to do so.

He testified further that even if it were grand jury testimony, that it was his opinion, as the Assistant Attorney General in charge of the criminal division, that there would be no impropriety in the President divulging that to subordinates in the course of his official duties, and specifically he said that he would be better able to determine whether or not Haldeman and Ehrlichman, to be specific, should be permitted to continue in their very important duties if he could discuss, he the President could discuss this information with them and determine whether he should keep them on or not.

Now, it seems to me that Henry Petersen is certainly one person who has come unscathed through this ordeal as a very dedicated public servant, a professional of the highest standards, and that his testimony should be given a great deal of weight.

He further testified that it is generally the practice within the Government for persons accused of wrongdoing to be confronted not only with the charges against them, but also the information on which those charges are based. And for that reason he felt that it was entirely appropriate for the President to transmit that information to Ehrlichman or Haldeman.

Now, I think this testimony of his is so important that I want to refer to it in detail, and this is during the examination by Mr. Dennis of Indiana at page 142 of book 3.

*Question.* Mr. Petersen, I think you testified earlier that the information which you transmitted to the President of the United States was not, in fact, grand jury testimony, but rather material in evidence which you and the Department of Justice had accumulated and acquired by your own investigations. Is that correct?

*Answer.* That is right, but, it is a treacherous area. At the time I was receiving information, it was not grand jury information, but that some information, maybe within a matter of a day, would become grand jury information.

*Question.* I understand that. However, at the time you had it, and at the time you transmitted it, it had not yet become so, is that true?

*Answer.* Well, certainly at the time I transmitted it. Whether at the time—certainly at the time I got it. Whether or not it was at the time of transmittal it was grand jury information, I was not keeping that close a track of it.

*Question.* OK. And you testified, however—

The CHAIRMAN. The gentleman has consumed 5 minutes.

Mr. MAYNE. Will the gentleman yield to me 2 additional minutes?

The CHAIRMAN. That will come out of the 10 minutes that is allotted.

Mr. MAYNE. Yes, I understand.

The CHAIRMAN. The gentleman is recognized for 2 more minutes. Mr. MAYNE. Thank you, Mr. Chairman.

*Question.* And you testified, however, that had it, in fact, been technically grand jury testimony that, in your legal opinion, you had a perfect right to transmit it to the President? Is that right?

Answer. Yes, sir.

*Question.* And I think you testified also that had it, in fact, also been grand jury testimony that in your legal opinion it would be entirely proper, correct and legal for the President, in the discharge of his administrative function in determining whether or not to fire Haldeman and Ehrlichman what he should do about them and so on, to inform them of the charges against them, is that correct?

Answer. Yes, sir.

Now, similar answers were given by this distinguished public servant to a number of Congressmen who questioned him on the subject, and it seems clear that much ado is being made about nothing in this particular paragraph insofar as it related to the testimony that the President did transmit information received from Mr. Petersen.

Mr. RANGEL. Would the gentleman yield?

Mr. DENNIS. Mr. Chairman?

Mr. MAYNE. I yield back my time to Mr. Dennis.

The CHAIRMAN. The gentleman from Indiana is recognized for the remainder of the time—3 minutes.

Mr. DENNIS. Thank you, Mr. Chairman.

Mr. Mayne has made my speech for me and made it very well. I am very happy that he recalled that colloquy that I had with Mr. Petersen and called it to our attention, because it is the answer. Mr. Petersen said in the first place that it was not grand jury testimony altogether—some of it was, some of it wasn't. In the second place, if it had all been grand jury testimony he would have had a perfect right to tell the President of the United States about it, as he did. In the third place, the President of the United States had a perfect right to take up with these people the general subject matter with which they were charged for his administrative purposes and in order to determine whether or not they ought to be fired or retained, and "I expected him to do that when I talked to him."

And there was not anything illegal about it.

Now, that is the Petersen testimony.

And now we are going to hang somebody because of that transaction when that is the man involved has to say about it and it is very, very difficult to see. Mr. Petersen has no complaint and I would not think that this committee would have any complaint either.

Now, that is adequately covered and I hope everyone here understands exactly the procedure we are going through. Yesterday we gave these people a little hard time because they would not file an ordinary charge, which as Mr. Latta said, would be granted to any jaywalker in the land. So today they have concocted a scenario and we have a series of motions which nobody intends to vote for, even including the charming gentleman who makes them, just so they can talk about specifics that they were not willing to plead. That is all right. It is good, clean fun, I guess. A little bit farcical, I think, for such a serious procedure.

I am afraid some of the bias against the President is showing here and there in this kind of an operation. I am afraid so, but really there is not very much more to say about this particular charge because the man who was involved and whose information was supposed to be transferred has no complaint and said that it was perfectly all right.

I think the gentleman from New Jersey, Mr. Sandman, wanted me to yield to him, and I will be happy to do so.

Mr. SANDMAN. Thank you.

My only purpose in seeking this 1 minute is, I have a question for my friend from Alabama. On my motion to strike, you voted no. On the second one, of course, we had no vote. On three and four, you only voted present. Five and six, we had no vote. Now, on seven, I am curious: Are you going to vote for your own amendment or are you going to continue to call on people to defeat your amendment?

The CHAIRMAN. The time of the gentleman has expired.

Mr. FLOWERS. Mr. Chairman, may I answer the question?

Mr. SANDMAN. Could I have unanimous consent to have the gentleman answer?

The CHAIRMAN. Without objection.

Mr. FLOWERS. Well, the caliber of the debate is so outstanding, Mr. Sandman, that it leaves me undecided at the conclusion.

The CHAIRMAN. The committee will please be in order and I think it is important that we try to maintain some decorum in this chamber.

The gentleman from Illinois is recognized for 5 minutes.

Mr. RAILSBACK. Mr. Chairman, members of the committee, I have spoken to this issue before and I regret the need to have to go back into it. But, I guess this is what we have decided to do today.

Let me just say that I think the American people, if they want to suitably apprise themselves of the facts surrounding the events of April 15, ought to get ahold of the transcripts and look at them.

The two preceding speakers forgot to relate a couple of important events. The President of the United States, who was interested in finding out about the involvement of Haldeman and Ehrlichman, his two top aides, had specifically assured Henry Petersen, the new top law enforcement officer investigating the Watergate situation, that he would not divulge any information given to him, and he said it something like this: "You are talking only to me, and there's not going to be anybody else in the White House staff. In other words, I am acting counsel and everything else."

The President then suggested the only exception might be Dick Moore. When Petersen expressed some reservation about information being disclosed to Mr. Moore, the President said "Let's—better keep it with me then."

At that meeting Petersen supplied the President with a memorandum which he had requested on April 15 summarizing the existing evidence that implicated Haldeman, Ehrlichman, and Strachan.

Later that same day, April 16, there was a telephone conversation. Even more specific the President told Mr. Petersen this. He said, he asked Petersen if there were any developments he should know about and he reassured Petersen that, "Of course, as you know, anything you tell me, as I think I told you earlier, will not be passed on because I know the rules of the grand jury."

Now, it is true that some of the information that was given to the President by Henry Petersen was not strictly grand jury information, although as the gentleman, my friend that spoke before me said, that this was in a treacherous area.

Let me just say that what the President did is extremely significant because in examining Henry Petersen myself, and this has not come out, Henry Petersen said in his opinion there wouldn't be anything wrong with relating the charges to the two top aides so that they would be apprised and he could get somebody else to take their place. I specifically asked if he differentiated between the charges and telling them to take some positive course of action. Henry Petersen said "Do you mean tactics?" And here was the conversation.

"Now, in light of this," and I am examining Henry Petersen, "you testified earlier this morning, I think, and frankly, I agree with what you said, that it is not improper for you, I don't think it is improper for you to divulge this to the President. What concerns me so much about this is that the President didn't seem to be revealing charges. He is stating information, and possibly even making suggestions to them what they could do." Now I am referring specifically to what the President told to two professional criminal defendants on the morning of the 17th. The President told Haldeman that the money issue was critical. "Another thing, if you could get Strachan and yourself to sit down and do some hard thinking about what kind of strategy you are going to have with the money, you know what I mean?" And my recollection is that Mr. Haldeman said, "Yeah." And then he goes on and he takes up after some material deleted, and he goes in to Kalmbach. "What does Kalmbach know. What is Kalmbach going to say?" In addition, the President instructed Haldeman, "Well, be sure that Kalmbach is at least aware of this, that LaRue had talked very freely. He is a broken man."

When Henry Petersen said he didn't think there was anything wrong with advising of the charges, he was not talking about the President trying to get them to engage in some kind of a tactic. Not only was that true, he differentiated between advising even of charges to the top aides and advising Kalmbach, who had already been implicated, and it was suggested to the President earlier that Kalmbach was going to have to be called as a witness.

I suggest that when Henry Petersen said in response to a question by Mr. Eilberg that we were not talking about Federal Rule 6E that relates to the grand jury but we were talking about section 1503 of title 18, which has to do with the impediment, the obstruction of the due administration of justice, and I suggest that it is up to each one of us members to look at the facts that have been related by the President's own transcripts and make up their minds whether they think that the President was simply relating to Haldeman and Ehrlichman the charges that had been leveled against them, or whether he was telling them what they should do.

Mr. HUNGATE. Would the gentleman yield briefly?

Mr. RAILSBACK. Yes.

Mr. HUNGATE. I think in evaluating this testimony which you have so ably delineated that you recall the conversation of April 16, 1973, in the President's transcripts, GPO page 941, where Nixon says "Well,

let me say I have got Petersen on a short leash." Ehrlichman says "OK."

I thank the gentleman.

Mr. RAILSBACK. That is true.

Let me just say in closing, in fairness to my friend, Mr. Wiggins, who has just slipped me a note, Henry Petersen further suggested after this kind of examination that dealt with the difference between charges and tactics, and somebody like Kalmbach who is not a top aide, who he also told Haldeman to notify, he suggested it is a question for this committee to determine whether there was corruption in the mind of the President.

In other words, what were the President's motives, and that is the issue.

The CHAIRMAN. The time of the gentleman has expired.

All time has expired, and the question is now on the motion of the gentleman from Alabama.

All those in favor of the motion please signify by saying aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The noes have it, the noes appear to have it and—

Mr. SANDMAN. On this I demand the yeas and nays.

The CHAIRMAN. The gentleman from New Jersey demands a rollcall vote, and the clerk will call the roll.

All those in favor of the motion please signify by saying aye, and all those opposed, no.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

[No response.]

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. No.

The CLERK. Mr. Flowers.

Mr. FLOWERS. Present.

The CLERK. Mr. Mann.

Mr. MANN. No.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. No.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. No.

The CLERK. Mr. Danielson.

Mr. DANIELSON. No.

The CLERK. Mr. Drinan.  
 Mr. DRINAN. No.  
 The CLERK. Mr. Rangel.  
 Mr. RANGEL. No.  
 The CLERK. Ms. Jordan.  
 Ms. JORDAN. No.  
 The CLERK. Mr. Thornton.  
 Mr. THORNTON. No.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. No.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. No.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. No.  
 The CLERK. Mr. Hutchinson.  
 Mr. HUTCHINSON. Aye.  
 The CLERK. Mr. McClory.  
 Mr. McCLORY. No.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. Aye.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. Aye.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. No.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. Aye.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. Aye.  
 The CLERK. Mr. Fish.  
 Mr. FISH. No.  
 The CLERK. Mr. Mayne.  
 Mr. MAYNE. Aye.  
 The CLERK. Mr. Hogan.  
 Mr. HOGAN. No.  
 The CLERK. Mr. Butler.  
 Mr. BUTLER. No.  
 The CLERK. Mr. Cohen.  
 Mr. COHEN. No.  
 The CLERK. Mr. Lott.  
 Mr. LOTT. Aye.  
 The CLERK. Mr. Froehlich.  
 Mr. FROEHLICH. Aye.  
 The CLERK. Mr. Moorhead.  
 Mr. MOORHEAD. Aye.  
 The CLERK. Mr. Maraziti.  
 Mr. MARAZITI. Aye.  
 The CLERK. Mr. Latta.  
 Mr. LATTA. Aye.  
 The CLERK. Mr. Rodino.  
 The CHAIRMAN. No.  
 Mr. BROOKS. Mr. Chairman?  
 The CHAIRMAN. Mr. Brooks.  
 Mr. BROOKS. May I be recorded as no.

The CLERK. Mr. Brooks votes no.

The CHAIRMAN. And the clerk will report.

The CLERK. Mr. Chairman, 11 members have voted aye, 26 members have voted no, 1 member has voted present.

The CHAIRMAN. And the motion is not agreed to.

The Chair recognizes the gentleman from Alabama, Mr. Flowers.

Mr. FLOWERS. Thank you, Mr. Chairman. I have an amendment or a motion to offer to subparagraph 8.

The CHAIRMAN. The clerk will report the motion.

The CLERK [reading]:

Amendment by Mr. Flowers.

Strike subparagraph 8 of the Sarbanes substitute.

Mr. FLOWERS. Mr. Chairman, I ask unanimous consent that the debate on this amendment be limited to 20 minutes to be divided 10 minutes to the proponents and 10 minutes to the opponents.

The CHAIRMAN. Without objection, it is so ordered.

Mr. FLOWERS. And I have discussed this matter with the gentleman from Utah, Mr. Owens, and I would like to ask if he has any comments to make on this subparagraph at this time?

The CHAIRMAN. The gentleman is recognized for 5 minutes.

Mr. OWENS. I will say to the gentleman from Alabama that it so happens that I am prepared to comment on subparagraph 8 and I express my appreciation to him for yielding.

Subparagraph 8 deals with the question of whether the President made false or misleading public statements for the purpose of deceiving the people of the United States into believing a fair and complete investigation had been conducted with respect to allegations of misconduct on the part of personnel of the executive branch of the United States and personnel of the Committee for the Re-Election of the President. And there has been a great deal said during the course of this debate on this subject.

I will try to find some new materials and make reference to them.

During the course of preparation for this final debate I think the most significant, the most interesting document that I went over was a compilation by the committee, of the Presidential statements on the Watergate break-in and its investigation. And I went through with a red pen one night, spent 3 or 4 hours on it, and underlined all of the statements during this period of time which I found to be, as I assessed the evidence, either false or misleading, or less than a straightforward, candid statement and as I go through this I find that there are red marks on almost every page, and it was a very telling point for me.

Mr. SARBANES. Can we have order, Mr. Chairman?

Mr. OWENS. I would like to refer—

The CHAIRMAN. The gentleman will defer until the committee and the gentlemen and ladies in the audience are in order.

The gentleman will proceed.

Mr. OWENS. Thank you, Mr. Chairman.

On October 5, 1973, the President had a press conference. This was I think 2 weeks almost to the day of the time that Mr. Cox was fired on a Saturday night, the so-called "Saturday Night Massacre," and the following Tuesday, as members will remember, there was a total



of 94 Members of the House who joined in impeachment resolutions, and following which the President gave up the tapes. But, at the time of October 5 the President—or at least there were no tapes that were available, but the President is asked this question:

Mr. President, to follow up on the tapes question, earlier you have told us that your reasons are based on principles, separation of powers, executive privilege, things of this sort. Can you assure us that the tapes do not reflect unfavorably on your Watergate position, that there is nothing in the tapes that would reflect unfavorably?

And the President, in front of the American people says this:

There is nothing whatsoever. As a matter of fact, the only time I've listened to the tapes, to certain tapes, and I didn't listen to all of them, of course, was on June 4. There is nothing whatever in the tapes that is inconsistent with the statement that I made on May 22 or of the statement I made to you ladies and gentlemen in answer to several questions, rather searching questions, may I say, and very polite questions 2 weeks ago for the most part, and finally nothing that differs whatever from the statement that I made on the 15th of August.

I will not try to go into what these tapes have revealed except to say that I think that the committee, most members of the committee have commented at one time or another that it is the tapes which have presented the case, the real case, hard case of evidence against the President, which tapes were released within about a month of that time.

Now, I would like to refer back to a Presidential news conference of August 22, 1973. Again, this is several months before the tapes were released at a time that the President indicated he would not release any tapes. In this press conference the President made several assertions, which I think were less than candid, in his statements to the press, and through them to the American people.

He said that "In the summer of 1972 Mr. MacGregor," who had replaced Mr. Mitchell as director of his campaign, "Mr. MacGregor had conducted a thorough investigation in 1972 about the involvement of White House personnel."

Mr. MacGregor has testified before the grand jury in sworn testimony that is before this committee in evidence that he received no instructions from the President and that he did not conduct a thorough investigation about the involvement of White House personnel.

In response to another question in that same press conference the President said that on March 22 he had told Ehrlichman, Haldeman, Mitchell, and Dean that "We must get this story out. We must get the truth out, whatever and whoever it is going to hurt."

When the tape finally was released and it became public, in that conversation of March 21 to which the President refers, when that was made public, and we have a recording, and the committee members have heard that recording and they have heard the President instruct Mr. Dean and Mr. Mitchell and Mr. Haldeman and Mr. Ehrlichman this: "I don't give an [expletive deleted] what happens. I want you all to stonewall it. Let them plead the fifth amendment, cover up or anything else if it will save it, save the plan. That's the whole point." And then later on he says "I don't know but that's a—you know, up to this point the whole theory has been containment, as you know, John."

Not only is there no such quote as the President quoted himself as giving, but when one reads the transcript there is an exact direction to those four directions to do the exact opposite thing.

The CHAIRMAN. The time of the gentleman has expired.

Mr. OWENS. Thank you, Mr. Chairman.

The CHAIRMAN. I recognize the gentleman from California, Mr. Moorhead, for 5 minutes.

Mr. MOORHEAD. Thank you, Mr. Chairman.

The CHAIRMAN. In support of the amendment.

Mr. MOORHEAD. I think one thing, and that is that the people of this committee should realize exactly what is going on here this afternoon, and that is that all day the staff and the members of the majority have refused to give us a detailed complaint to be filed against the President of the United States so that he could tell exactly what he is charged with, the other side has gone into an attempt to present a lot of evidence, a lot of facts that they claim is evidence, to this committee that really is not supported by the materials that we have taken in their best context.

I know Mr. Flowers is doing the thing that he feels is important for him to do in bringing up each one of these motions to strike. But, he obviously is against them or he would vote for them. And then each one of the members of the majority, those wanting to have impeachment, is reading a copy of a paper, prepared I suppose by our million-dollar staff. The words sound so very close to being alike and the same kind of version that obviously they have been prepared by someone with a tremendous imagination.

And I think that, of course, they have a right to express their opinion, but I do think that when we are considering such an important thing as the impeachment of a President that we ought to stick to the evidence that we have, and the very best interpretation of the evidence that we have.

Some of the things that have been stated are just not borne out by the facts. I just received a copy of the recent version that was just given. It was stated first on June 22, 1972, the President publicly adopted as his position, and as factually accurate to the previous statements of Mitchell and Ziegler that the White House had no involvement whatsoever in the Watergate break-in, and that the CRP had no legal, moral or ethical accountability for the break-in. There is absolutely no evidence that the President had any knowledge of the involvement of White House people at the time that he made this statement.

In fact, the evidence is to the contrary. He had been told that there was no involvement.

It was also stated that the grounds for this section were that on August 20, 1972, the President publicly stated that at the President's direction Dean had conducted a complete investigation which indicated that no one in the White House staff or in the administration was involved in the Watergate, and that the CRP was also conducting an investigation of the Watergate.

Ehrlichman directed Dean to conduct an investigation to see if anyone in the White House was involved. No one presently employed in the White House was involved, as was stated. True, there had been one man in the White House that had been there previously that had left.

The third statement was given that on October 5, 1972, the President publicly stated that he wanted every lead carried out by the FBI to the end, "because I wanted to be sure that no member of the White House staff and no man or woman in a position of major responsibility in the Committee for the Re-election had anything to do with this kind of reprehensible activities." This statement was true. The President did tell Mr. Gray to pursue his investigation.

This goes down the line, and I do not intend to go through all of these various sections, but I want one thing very clear, and that is from the presentation of the live witness before this committee, it is apparent that Mr. Dean was the man in the White House that had the responsibility to look into the Watergate investigation. And Mr. Colson told us here, with no ax to grind, that everything was forwarded to Dean that pertained to the Watergate. Dean was the man that they looked to for any investigation that was done. And when we listened to the tape of the conversation between the President and Mr. Dean prior to Mr. Dean going up to Camp David, the President's comment, and I do not remember the exact words was well, this will give you an opportunity to think about the things that have happened and to prepare a report. Mr. Dean went to Camp David, did not prepare a report, although he was again specifically ordered to do so while he was there. I guess his involvement was too deep for him to really be able to prepare something.

And as a result, Mr. Dean came back without the report for the President.

But, it is perfectly clear that the President looked to Dean for the investigation, for information on this matter.

The CHAIRMAN. The time of the gentleman from California has expired.

The gentleman from Indiana.

Mr. DENNIS. Thank you, Mr. Chairman.

The CHAIRMAN. You are recognized for 5 minutes.

Mr. DENNIS. I don't just happen to have a lot of prepared material by me like my friend from Utah does, because to use one of the President's favorite words, the scenario has not been so well written over here as it has been over there where this has been very carefully taken care of by the assistance of staff counsel and everyone has his piece. But, I think I can still read English unassisted, and I do not need a lot of reference, I do not believe, to help convince any reasonably openminded person, if there is such a person on the committee, that this particular paragraph belongs out of here on a motion to strike.

Honest to God, just ordinary garden variety principles, without much reference to the weighty matters we are dealing with, because it just does not have anything to do with what we are talking about. We should go back to the beginning of article I and see what we are discussing.

The article starts out and it says that on June 17, 1972, agents of the Committee to Re-elect committed an illegal entry into the Democratic National Committee Headquarters and subsequently thereto Mr. Nixon, pursuant to plan, and so forth, acting through various subordinates did various things to delay, impede and obstruct the investigation of such illegal entry. That is what this is all about.

And to cover up and protect those responsible. Now, that is the gravamen of the charge, that he tried to obstruct the investigation of an illegal entry and protect those responsible.

Then they begin to spell out how that was done, not how something else was done, and you come down to this No. 8 and it says making false or misleading public statements. I do not care whether false or misleading or not, our present purpose is, the question is do they obstruct the investigation of this break-in and protect the people who did it? And it says here not for that purpose, because I suppose anyone could see that that would not be very much for obstructing an investigation of a break-in but for the purpose of deceiving the people of the United States into believing that a thorough and complete investigation had been conducted when I suppose, in fact, it had not been.

Now, if that is any kind of a charge at all, I certainly submit that it is not the charge of article I. You could have just as false a statement, and I would like to make clear that I am not conceding there was any false statement, but for the sake of argument, you could have one and you could have one made for the purpose of making people think that there had been an investigation of this break-in and you still would not have any single thing which implemented the charge here, which is obstructing the investigation of the break-in. What difference does it make what the old lady in Dubuque thinks about whether there is an investigation or not? The question is was there, and was something done which interfered with the investigation.

The President of the United States could put anything he wanted to in all of the papers in the country and it would not interfere with that investigation, which is what we are talking about here.

This No. 8, whatever it is, just does not belong here as a specification, such as it is, of this particular charge. And I think my good friend from Alabama, whom I greatly love, respect, and admire, will vote with me to strike this one because I just simply suggest and submit that there is not any logical grounds on which you can leave this monstrosity in here in this particular place.

I just do not see it.

I yield to the gentleman from Mississippi.

Mr. LOTT. I thank the gentleman for yielding.

On this particular charge I think there are three things we should keep in mind. First a question.

Did the President have knowledge that he was allegedly making false statements?

Second, some of the arguments advocated in behalf of this section are actually true, and so what?

And third, are we now in the business of impeaching Presidents for making misleading statements?

The CHAIRMAN. The time of the gentleman from Indiana has expired. I now recognize the gentleman from California, Mr. Waldie, for 5 minutes, in opposition to the amendment.

Mr. WALDIE. Thank you, Mr. Chairman.

Mr. Chairman, I think the charge that the coverup was really continuing at the very highest level is embodied in this declaration that the President was making false or misleading public statements for the purpose of cementing the coverup. All the activities of those below

the President became manifested in terms of the certainty when the President himself says, "That this matter is now being investigated thoroughly and that the results we will give to you are the only results that need be given."

Now, there may be some question as to whether the President had, within his knowledge, facts up through and until April 30, 1973, because all of these statements were made at a time when we did not have, in our possession, the edited transcripts.

The President then on April 30, May 22, August 15, and August 22 continued to make statements that were less than complete.

Now, the question is, was the coverup continuing on April 30 and dates subsequent thereto?

It is my own contention that the coverup was continuing in those public statements because there is no question that the erroneous statements actually from April 30, May 22, August 15, and August 22 were clearly known to the contrary to the President because he had edited transcripts of all his conversations. He had full transcripts of all his conversations.

The last public statement the President made on this issue to the Nation was April 30 of this year, April 30 of this year, 1974, and he said as he has said in every one of these statements to the people of this Nation, tonight I am giving you the definitive story, the real story of Watergate. Everything you need to know about Watergate is contained, and he pointed, as Mr. Latta did last night, to his 47 volumes of edited transcripts. And he said, up to this point you have not had the full story, though he had made about 10 public statements saying we had had the full story, but this is the definitive full story, the edited transcripts which he is releasing to the Nation. And he said after you have read these, you need no more information. It is all there.

Now, we ought to examine was he telling the truth to the public on April 30 of this year when he said all the truth of Watergate is contained in these edited transcripts? The Nation relied on it as the President thought they would and believed this is the final statement about Watergate. Everything up to this point has been less than full because the President says now it is a full story, though it goes back to April 30, 1973.

The President says in April 1974, what I told you before April 30, 1973, was not the definitive story but this is. Everything now is in these transcripts.

Well, everybody heaved a sigh of relief and said, "Well, thank God, the President finally has told us the full story of Watergate and that is about time, and we are pleased and we are relieved that the President has now told everything there is to know about Watergate."

The committee began examining the edited transcripts and the committee got ahold of tapes from which those transcripts had been transcribed, and the tapes on our equipment compared to the President's edited transcripts were incredibly more incriminating and, in fact, produced a great deal more of the story of Watergate, so that the last public statement of the President, April 30, 1974, that is the full story of Watergate, again has been false and misleading in the extreme because it was misleading in every aspect in those mistaken transcripts, those altered transcripts, misleading in a manner beneficial to the

President, intentionally omitted and deleted, intentionally deceptive and misleading.

The allegation "making false or misleading public statements for the purpose of deceiving the people of the United States" is an allegation that has been sustained amply as recently as April 30 of this very year.

I yield back the balance of my time.

The CHAIRMAN. The time of the gentleman from California has expired. All time has expired and the question now occurs on the motion of the gentleman from Alabama. All those in favor of the motion, please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed.

[Chorus of "noes."]

The CHAIRMAN. The noes appear to have it.

Mr. SANDMAN. Mr. Chairman?

The CHAIRMAN. The gentleman from New Jersey.

Mr. SANDMAN. On this I demand the ayes and nays.

The CHAIRMAN. Call of the roll is demanded and the clerk will call the roll. All those in favor of the motion please signify by saying aye. All those opposed, no.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. No.

The CLERK. Mr. Flowers.

Mr. FLOWERS. Present.

The CLERK. Mr. Mann.

Mr. MANN. No.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. No.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. No.

The CLERK. Mr. Danielson.

Mr. DANIELSON. No.

The CLERK. Mr. Drinan.

Mr. DRINAN. No.

The CLERK. Mr. Rangel.

Mr. RANGEL. No.

The CLERK. Ms. Jordan.

Ms. JORDAN. No.  
 The CLERK. Mr. Thornton.  
 Mr. THORNTON. No.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. No.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. No.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. No.  
 The CLERK. Mr. Hutchinson.  
 Mr. HUTCHINSON. Aye.  
 The CLERK. Mr. McClory.  
 Mr. McCLORY. Aye.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. Aye.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. Aye.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. No.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. Aye.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. Aye.  
 The CLERK. Mr. Fish.  
 Mr. FISH. No.  
 The CLERK. Mr. Mayne.  
 Mr. MAYNE. Aye.  
 The CLERK. Mr. Hogan.  
 Mr. HOGAN. No.  
 The CLERK. Mr. Butler.  
 Mr. BUTLER. No.  
 The CLERK. Mr. Cohen.  
 Mr. COHEN. No.  
 The CLERK. Mr. Lott.  
 Mr. LOTT. Aye.  
 The CLERK. Mr. Froehlich.  
 Mr. FROEHLICH. Aye.  
 The CLERK. Mr. Moorhead.  
 Mr. MOORHEAD. Aye.  
 The CLERK. Mr. Maraziti.  
 Mr. MARAZITI. Aye.  
 The CLERK. Mr. Latta.  
 Mr. LATTI. Aye.  
 The CLERK. Mr. Rodino.  
 The CHAIRMAN. No.  
 The CLERK. Mr. Chairman?  
 The CHAIRMAN. The clerk will report.  
 The CLERK. Mr. Chairman 12 members have voted aye, 25 members  
 have voted no, 1 member has voted present.  
 The CHAIRMAN. And the motion is not agreed to.  
 I recognize the gentleman from Alabama, Mr. Flowers.  
 Mr. FLOWERS. Mr. Chairman, I have a motion at the desk.

The CHAIRMAN. The clerk will report the motion.

The CLERK [reading]:

Amendment by Mr. Flowers.

Strike subparagraph 9 of the Sarbanes substitute.

Mr. FLOWERS. Mr. Chairman, I ask unanimous consent that the debate on my amendment be limited to 20 minutes, with 10 minutes being allocated to the proponents of the amendment and 10 minutes to the opponents.

The CHAIRMAN. Without objection, it is so ordered.

Mr. FLOWERS. And I yield my 5 minutes to the gentleman from Missouri, Mr. Hungate.

Mr. HUNGATE. I thank the gentleman for yielding.

Mr. Chairman, we have had complaints concerning the lack of direct evidence and complaints concerning circumstantial evidence and I want you to know there are people in jail today on circumstantial evidence. Ordinary citizens, their lawyers and the courts throughout the land act on circumstantial evidence every day.

The President had and has agents, confidants, and employees. In this debate we have been shown the problems of agency, and respondent superior.

I sometimes think that we might be convinced that the head of General Motors does not make motorcars.

But yes, Virginia, there is a law of agency and it applies to the President as it does to you.

Now, direct from the President's own transcripts and in his own words. This is at 8:55 a.m.—this conversation began on April 14, 1973, in the Executive Office Building—the President, Haldeman, and Ehrlichman.

The President speaks:

Lovely wife and all the rest, it just breaks your heart. And say this, this is a very painful message for me to bring—I've been asked to give you, but I must do it and it is that: Put it right out that way. Also, I would first put that in so that he knows I have personal affection. That's the way the so-called clemency's got to be handled. Do you see, John?

EHRLICHMAN. I understand.

Later in the same day, in a conversation taking place at, beginning, at 11:22 a.m., the President says:

One point. You are going to talk to Dean?

EHRLICHMAN. I am.

PRESIDENT. What are you going to say to him?

EHRLICHMAN. I am going to try to get him around a bit. It is going to be delicate.

The PRESIDENT. Get him around in what way?

EHRLICHMAN. Well, to get off this passing the buck business.

PRESIDENT. John, that is—

EHRLICHMAN. It is a little touchy and I don't now how far I can go.

PRESIDENT. John, that is not going to help you. Look, he has to look down the road to one point, that there is only one man who could restore him to the ability to practice law in case things go wrong. He has got to have that in the back of his mind.

EHRLICHMAN. Uh, huh.

Later in the same conversation in response the President says:

Well, with Dean I think you can talk to him in confidence about a thing like that, don't you? He isn't going to—



EHRLICHMAN. I am not sure—I just don't know how much to lean on that reed at the moment.

PRESIDENT. I see.

EHRLICHMAN. But I will sound it out.

PRESIDENT. Well, you start with the proposition, Dean, the President thinks you have carried a tremendous load and his affection and loyalty to you is just undiminished.

EHRLICHMAN. All right.

PRESIDENT. And now, let's see where the hell we go.

EHRLICHMAN. Uh, huh.

PRESIDENT. We can't get the President involved in this. His people, that is one thing. We don't want to cover up, but there are ways. And then he's got to say, for example? You start with him certainly on the business of obstruction of justice.

EHRLICHMAN. That's right.

PRESIDENT. Look, John—we need a plan here. And so that LaRue, Mardian and the others—I mean.

EHRLICHMAN. Well I am not sure I can go that far with him.

PRESIDENT. He can make the plan up.

EHRLICHMAN. I will sound it out.

Now, on page 115 of the transcripts of eight recorded Presidential conversations on the date of March 21, 1973, the President says: "Well, another way, another way to do it then, Bob"—Mr. Haldeman is there—"is to—and John realizes this—is to, uh, continue to try to cut our losses. Now, we have to look at that course of action. First, it is going to require approximately a million dollars to take care of the jackasses that are in jail. That could be, that could be arranged."

Haldeman or Dean—you have got an option—"Yeah."

PRESIDENT. That could be arranged. But you realize that after we are gone, I mean, assuming these [unintelligible] are gone, they're going to crack, you know what I mean? And that'll be an unseemly story. Eventually, all the people aren't going to care that much.

DEAN. That's right, it's—

PRESIDENT. People aren't going to care.

DEAN. So much history will pass between then and now.

PRESIDENT. In other words, what we're talking about is no question.

The CHAIRMAN. The gentleman has consumed 5 minutes.

The gentleman from New Jersey, Mr. Sandman, is recognized for 5 minutes—

Mr. McCLODY. Will the gentleman yield to me?

The CHAIRMAN [continuing]. In support of the amendment.

Mr. McCLODY. Yield to me for 1 minute.

Mr. SANDMAN. I yield to the gentleman from Illinois.

Mr. McCLODY. I hope that this part of article I will be stricken. I think that this above anything else perhaps demonstrates the contradictory evidence which is presented here and with the supposition that somehow this is easier and convincing proof.

The President in this conversation to which Mr. Hungate referred used the expression "best wishes and gratitude" and that is going to be inferred and interpreted as clemency. I think the only true subject of clemency was the one with Colson following Mrs. Hunt's death, which is perfectly understandable, when Hunt's wife had been killed and he was suffering from that loss and about to go to jail, the subject of clemency would be discussed with Mr. Colson and in that context, and it seems to me to stretch that into an article of impeachment against the President is completely unsupported whatsoever.

I thank the gentleman for yielding.

Mr. SANDMAN. I thank you very much. It looks like—I cannot yield on the limited time that I have because I would like to make a summary of what I have witnessed here, and I know the people have, too.

Is it not amazing how that magic vote has held so firmly. Even to a point where the gentleman who moved all of these motions to strike did not even support his own motion. Can you imagine such discipline. Uncanny, to say the least. And this is why I suggested when we opened our session today that this would be such a fruitless waste of time and it has been. And 220 million people know what you are up to. You did not kid anybody. You tried to sell them a bill of goods. And we did not, with all of our arguments, persuade a single vote. There is no way humanly possible to do that at this forum, and this is why I suggested to my colleagues there will be another day, and God help us if we have the right to have another day, and that is going to be on the House floor.

Now, let's just take a look at where we are today. Certainly some good soul who makes up his mind, as we have heard so many say, the way his conscience would make him believe would give us a vote on this one because if every one of these things should be stricken, it is No. 9. Such hypocrisy in this charge.

This says that the President—

Mr. FLOWERS. Would the gentleman yield?

Mr. SANDMAN. Just my limited time.

Mr. FLOWERS. I tried—the gentleman is so persuasive.

Mr. SANDMAN. Payments to some people to keep their silence.

Mr. FLOWERS. Would the gentleman from New Jersey—

Mr. SANDMAN. Authorized the testimony and—maybe when I am finished, please. Let me try to get some votes on this one, I am reaching out.

Mr. FLOWERS. Well, you persuaded me already and, you know, you may talk me back out of it. [Laughter.]

Mr. SANDMAN. All right. I will get to you in a minute. It sounds like I am reaching you, so I am going to give you—

Mr. FLOWERS. You have gotten to me.

Mr. SANDMAN. I will give you my last 30 seconds if you let me get underway.

Now, all of the people who were involved in—this thing points out one of them that got favored treatment, one. So much has been talked about. They make the most out of every word that this man ever breathed, the throwing of that ashtray. Why, if I had a guy like John Dean working for me, I would probably throw him out of the house, not throw an ashtray. And so would you.

At any rate, here is a man with all the troubles of the world on his head, and every little thing that he says is multiplied up to the rooftops.

They did not even give him any credit for ending a war or anything like that. In fact, they got a little peeved that Henry Kissinger was doing so well and they thought he ought to come back and testify about something he said or he did not say in the Senate.

Nobody here is interested apparently in the country. We are interested here I suppose in getting somebody.

Now, the most important statement of all affecting clemency, and it is right in the Senate select committee testimony, John Ehrlichman,

who did a lot of things wrong, nobody said he did not, but we are talking about testimony. What did Ehrlichman say when he walked with the President on the beach at San Clemente? He talked about clemency and the President said, this is something that cannot be and will not be done.

That I think disposes of that argument.

Now, there are 37 fair-minded people here that are going to vote their conscience and for God's sake, do it on this one because you have not done it on the others.

Now, what earthly good has been accomplished by all of this?

The CHAIRMAN. The gentleman has consumed 5 minutes.

Mr. SANDMAN. I would like to have unanimous consent to yield 30 seconds to my friend from Alabama. I think he is going to vote for this one.

The CHAIRMAN. This is over and beyond the 20 minutes, but without objection, it is—the gentleman has 5 more minutes in support of the amendment.

Mr. FLOWERS. The gentleman from New Jersey persuaded me. I was actually persuaded, I might add, on this particular subparagraph.

The CHAIRMAN. The gentleman from New Jersey, Mr. Maraziti, is recognized.

Mr. MARAZITI. Thank you, Mr. Chairman.

I support the motion of the gentleman from Alabama for a number of reasons.

First, let me say that the—there are not sufficient allegations for this committee to know exactly what the charge is. There are not sufficient allegations for the respondent, the President of the United States, to know what the specific charge is.

A simple reading of the paragraph will indicate exactly what I mean.

“Endeavoring to cause prospective defendants,” what prospective defendants? If we know who they are, and we certainly ought to know who they are if they exist after 7 months of investigation, why could not the staff or the proponent of the resolution, the article of impeachment here, have named them?

It goes on to say: “And individuals duly tried and convicted,” to expect fair treatment and consideration, and so on.

What favored treatment and consideration?

“In return for their silence or false testimony or rewarding individuals.” What individuals? And what rewards?

I can only assume from what I have heard that we are speaking here of possibly executive clemency. I only know that from what I have heard presented here, not by an amendment to the articles of impeachment which I certainly would be satisfied with, but with a recitation of evidence of information that I suppose in due course is expected to be set forth to prove the allegation. And this is the problem we have had here for 2 days. I am sure that, as I said previously, as lawyers we know exactly what we are talking about here and what the difference is between allegations set forth in the article of impeachment and the evidence and the proof.

Mr. RAILSBACK. Would the gentleman yield? Yield to me?

Mr. MARAZITI. I will in just a moment. I do not know if I have enough time and I would like to finish my presentation. And let me

say that is what we should be doing, amending the articles of impeachment, but let us go to the facts that have been discussed and I think that since they have been discussed that it is only proper that we who may not agree should have an opportunity to answer them.

Yes, it is true that the President has on a number of occasions discussed this subject as other subjects have been discussed, and we know how he has carried on his activities as has been evidenced by the testimony here and the other information we have. He meets with his staff and he throws out ideas and suggestions and he wants alternatives, considers alternatives, and then suddenly makes up his mind and says yes or says no.

I think it is very clear that he has rejected, and he rejected clemency on a number of occasions.

Mr. McCLORY. Will the gentleman yield?

Mr. MARAZITI. Just as soon as I conclude.

All we have got to do is refer to the tape of March 21, 1973, and after discussing clemency, he says very emphatically, no, it is wrong. That is for sure. No, it is wrong, that is for sure.

And then again in the same tape, and the second thing is: "We are not going to be able to deliver on any of a clemency thing."

What I submit to you, members of the committee, is that certainly members of his staff had made many suggestions to the President. They talked to him. He listens to them. And then he accepts or rejects. In this case, in my opinion he very affirmatively rejected clemency. And I—

The CHAIRMAN. The time of the gentleman from New Jersey has expired.

The gentleman from Maryland—the gentleman from Missouri is recognized for 5 minutes to conclude.

Mr. HUNGATE. Thank you, Mr. Chairman.

I yield 2 minutes to the gentleman from Maryland, Mr. Hogan.

Mr. HOGAN. I thank the gentleman from Missouri for yielding and I would like to briefly address the questions asked by Mr. Maraziti with respect to the last sentence in this paragraph about rewards to individuals who had perjured themselves.

Mr. Maraziti said what individuals and what rewards? And I ask my friend from New Jersey, and he is my friend, what the reasonable and prudent man would conclude from the facts which I am going to recite.

Jeb Magruder testified that he had in January 1973 told H. R. Haldeman that he would commit perjury in the trial of the *United States v. Liddy* which he did. On February 19, 1973, Dean testified that he prepared a talking paper, he testified that on that date he prepared a talking paper for a meeting between Haldeman and the President at which Haldeman would discuss with the President an administration job for Magruder. The paper said that Magruder would be vulnerable if nominated for a position which required Senate confirmation because Sloan was going to testify against him and reveal a number of things.

Now, we tried to subpoena the tape of that conversation between Haldeman and the President and it was refused but we do know that after that meeting between Haldeman and the President, Magruder was offered the highest paying job available in the Government which

did not require Senate confirmation. He got a \$36,000 job at the Department of Commerce and he retained that position for even a month after Dean had discussed with the President on March 21, 1973, that Magruder had committed perjury. I submit an individual who was known to have committed perjury was rewarded for perjury.

Mr. MARAZITI. Will you yield so that I may have an opportunity to answer?

Mr. HOGAN. It is not my time. The gentleman from Missouri has the time.

The CHAIRMAN. Two minutes of the gentleman's time have expired and the gentleman from Missouri has 3 minutes remaining.

Mr. HUNGATE. I thank the gentleman. I yield briefly to the gentleman from Utah.

Mr. OWENS. I have a point of clarification.

Mr. MARAZITI. Will you yield, Mr. Hungate?

Mr. HUNGATE. I have a prior request, Mr. Maraziti.

Mr. OWENS. That statement that the gentleman read first, "is going to require approximately a million dollars to take care of the jackasses that are in jail, that could be arranged."

Is that the same group in jail that we are assured by the President's counsel the President justified payment of the \$500,000 for on the basis of compassion and concern?

Mr. HUNGATE. Mr. Owens, that may be, but in Missouri the term "jackass" is not necessarily derogatory.

[Laughter.]

Mr. Maraziti.

Mr. MARAZITI. I thank the gentleman.

Thank you very much, Mr. Hungate. Appreciate your yielding.

Now, in reference to the question propounded by my friend from Maryland, if he has the information, and apparently has some of it, I would like to ask the gentleman why he has not listed these names—that is what we are talking about—in the articles of impeachment, the names and the favored treatment, and so on. We want the specifics. I am not talking about the evidence. The specifics and the allegations.

Now, in reference to the charge that you made no evidence that the President has offered the job to Magruder, it says Magruder—says perjured himself. Says—no evidence the President offered the job to Magruder.

Thank you.

Mr. HUNGATE. I thank the gentleman and it seems we end as we began with a question. And there are different views here and I widely respect them and I think all of those here respect the different views because I think they help the country to develop the truth. Some wise man has written that the truth is seldom pure and never simple. I think we see that here today.

I would apologize to some if they have found occasional attempts at humor offensive but I have never thought a sense of humor needed to destroy your sense of responsibility and in my case I felt it better to have a sense of humor than no sense at all.

But to close on a most serious note, because this is a solemn responsibility that weighs heavily upon all of us and upon the staff and upon the American people, we all seek to do the right and proper thing and

I hope we can have divine guidance in the difficult decisions we must yet make. And I remember that I can see Omaha Beach, the national cemetery there of the United States, and in stone above the manument to the dead of World War II it says, "These endured all and sacrificed all, that justice among nations might prevail and that mankind might enjoy freedom and inherit peace." I hope our deliberations here will promote that cause.

Thank you.

The CHAIRMAN. The time of the gentleman from Missouri has expired. All time has expired and the question now occurs on the motion of the gentleman from Alabama. All those in favor of the motion please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed.

[Chorus of "noes."]

The CHAIRMAN. The noes appear to have it. The gentleman from New Jersey.

Mr. SANDMAN. On that I demand the ayes and nays.

The CHAIRMAN. The gentleman from New Jersey demands the ayes and nays and a call of the roll is ordered. The clerk will call the roll. All those in favor of the motion please signify by saying aye. All those opposed, no.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. No.

The CLERK. Mr. Flowers.

Mr. FLOWERS. Aye.

The CLERK. Mr. Mann.

Mr. MANN. No.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. No.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. No.

The CLERK. Mr. Danielson.

Mr. DANIELSON. No.

The CLERK. Mr. Drinan.

Mr. DRINAN. No.

The CLERK. Mr. Rangel.

Mr. RANGEL. No.  
 The CLERK. Ms. Jordan.  
 Ms. JORDAN. No.  
 The CLERK. Mr. Thornton.  
 Mr. THORNTON. No.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. No.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. No.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. No.  
 The CLERK. Mr. Hutchinson.  
 Mr. HUTCHINSON. Aye.  
 The CLERK. Mr. McClory.  
 Mr. McCLORY. Aye.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. Aye.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. Aye.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. Aye.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. Aye.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. Aye.  
 The CLERK. Mr. Fish.  
 Mr. FISH. Aye.  
 The CLERK. Mr. Mayne.  
 Mr. MAYNE. Aye.  
 The CLERK. Mr. Hogan.  
 Mr. HOGAN. No.  
 The CLERK. Mr. Butler.  
 Mr. BUTLER. No.  
 The CLERK. Mr. Cohen.  
 Mr. COHEN. No.  
 The CLERK. Mr. Lott.  
 Mr. LOTT. Aye.  
 The CLERK. Mr. Froehlich.  
 Mr. FROEHLICH. Aye.  
 The CLERK. Mr. Moorhead.  
 Mr. MOORHEAD. Aye.  
 The CLERK. Mr. Maraziti.  
 Mr. MARAZITI. Aye.  
 The CLERK. Mr. Latta.  
 Mr. LATT. Aye.  
 The CLERK. Mr. Rodino.  
 The CHAIRMAN. No.  
 The CLERK. Mr. Chairman?  
 The CHAIRMAN. The clerk will report.  
 The CLERK. Fifteen members have voted aye, 23 members have voted

no.

The CHAIRMAN. And the motion is now agreed to.

Not agreed to.

The question is——

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. The gentleman from Texas, Mr. Brooks.

Mr. BROOKS. I move the previous question on the Sarbanes substitute as amended.

Mr. FLOWERS. Mr. Chairman, I ask unanimous consent to proceed for 5 minutes.

The CHAIRMAN. Will the gentleman withhold——

Mr. BROOKS. I withhold the motion until that time, yes, sir.

The CHAIRMAN. Without objection, it is so ordered.

Mr. FLOWERS. Thank you, Mr. Chairman, and thank you, my colleagues on this committee.

In approaching this grave matter I said long ago that I will be guided by the facts and the Constitution and my own conscience. I honestly believe that I have been faithful to that commitment. I know for certain that I have nothing to gain politically or otherwise from what I must do here but after weeks of searching through the facts and agonizing over the constitutional requirements it is clear to me what I must do and I emphasize that this is my own personal decision, what I must do. I do not presume to influence any other person and I recognize that there can be differences on this grave matter.

In this regard, Mr. Chairman, let me say just a few words.

There are many people in my district who will disagree with my vote here. Some will say that it hurts them deeply for me to vote for impeachment. I can assure them that I probably have enough pain for them and me. I have close personal friends who strongly support President Nixon. To several of these close friends who somehow I hope will hear and see these proceedings, I say that the only way I could vote for impeachment would be the realization to me anyway that they, my friends, would do the same thing if they were in my place on this unhappy day and confronted with all of the same facts that I have. And I have to believe that they would or I would not take the position that I do.

Now, Mr. Chairman, I am prepared to vote on this article of impeachment but before so doing, I want to address my colleagues on this committee and particularly my colleagues on this side of the aisle, my Democratic colleagues.

Make no mistake, my friends, one of the effects of our action here will be to reduce the influence and power of the Office of the President. To what extent will be determined only by future action in the House or in the Senate. We have heard some eloquent statements and I honestly believe there has been more sincere thought and soul searching put forward on this terrible proposition than on anything else I have ever been connected with in any way. This is an extremely difficult vote for most of us but let us face it, it is less difficult for some than others. Some have had to reflect on whether they could or would vote to impeach a President of their own party, a Democrat, if you will, if the facts justified it. I hope they never have that chance. I hope not one of us ever has to look into another matter of impeachment again. But I suggest to my friends here that they do not have to wait 107



years to vote on the next impeachment to prove responsibility. They will undoubtedly have many instances as time goes on to prove their capacity to make those hard decisions that will have to come before this Congress or the next, and I agree that Congress should exert itself.

That is what we are doing here. But we will and should be judged by our willingness to share in the many hard choices that must be made for our Nation, such as allocation of scarce resources, such as management of the forces of inflation and recession, such as balancing priorities and controlling the spending of the taxpayers' money.

In the weeks and months ahead I want my friends to know that I will be around to remind them when some of these hard choices are up and we will be able to judge then how responsible we can be with our newly found congressional power.

Mr. FISH. Would the gentleman yield to me?

Mr. FLOWERS. I yield to the—

Mr. FISH. I thank the gentleman for yielding and, Mr. Chairman, for this opportunity to address not only the members on this side of the aisle who have labored these last 7 months, but also my friends and supporters in New York who are also by and large supporters of the President.

Mr. Chairman, I intend to vote in favor of this, the first article of impeachment. This comes after long deliberation, but it comes because an analysis of the evidence in this proceeding has led me to this inescapable conclusion.

I am sure you realize that my vote is not cast lightly. My decision has not been reached hastily. It is reached at all with deep reluctance only after I have been persuaded that the evidence for such a vote is clear, evidence warranting the recommendation by this committee of this article of impeachment to the House of Representatives.

I thank the gentleman.

The CHAIRMAN. The question—

Mr. McCLOREY. Will the gentleman withhold?

The CHAIRMAN. The question is—the question is before us and, there being no objection, I am going to put the question, and the question occurs on the substitute offered by the gentleman from Maryland, as amended.

All those in favor of the substitute of the gentleman from Maryland as amended, please signify by saying aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The ayes appear to have it and the call of the roll is demanded and the clerk will call the roll.

All those who are in favor of the amendment of the gentleman from Maryland, substitute as amended, please signify by saying aye, and all those opposed no.

The clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. Aye.  
 The CLERK. Mr. Edwards.  
 Mr. EDWARDS. Aye.  
 The CLERK. Mr. Hungate.  
 Mr. HUNGATE. Aye.  
 The CLERK. Mr. Conyers.  
 Mr. CONYERS. Aye.  
 The CLERK. Mr. Eilberg.  
 Mr. EILBERG. Aye.  
 The CLERK. Mr. Waldie.  
 Mr. WALDIE. Aye.  
 The CLERK. Mr. Flowers.  
 Mr. FLOWERS. Aye.  
 The CLERK. Mr. Mann.  
 Mr. MANN. Aye.  
 The CLERK. Mr. Sarbanes.  
 Mr. SARBANES. Aye.  
 The CLERK. Mr. Seiberling.  
 Mr. SEIBERLING. Aye.  
 The CLERK. Mr. Danielson.  
 Mr. DANIELSON. Aye.  
 The CLERK. Mr. Drinan.  
 Mr. DRINAN. Aye.  
 The CLERK. Mr. Rangel.  
 Mr. RANGEL. Aye.  
 The CLERK. Ms. Jordan.  
 Ms. JORDAN. Aye.  
 The CLERK. Mr. Thornton.  
 Mr. THORNTON. Aye.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. Aye.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. Aye.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. Aye.  
 The CLERK. Mr. Hutchinson.  
 Mr. HUTCHINSON. No.  
 The CLERK. Mr. McClory.  
 Mr. McCLORY. No.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. No.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. No.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. Aye.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. No.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. No.  
 The CLERK. Mr. Fish.  
 Mr. FISH. Aye.  
 The CLERK. Mr. Mayne.  
 Mr. MAYNE. No.

The CLERK. Mr. Hogan.

Mr. HOGAN. Aye.

The CLERK. Mr. Butler.

Mr. BUTLER. Aye.

The CLERK. Mr. Cohen.

Mr. COHEN. Aye.

The CLERK. Mr. Lott.

Mr. LOTT. No.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. Aye.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. No.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. No.

The CLERK. Mr. Latta.

Mr. LATTI. No.

The CLERK. Mr. Rodino.

The CHAIRMAN. Aye.

The CLERK. Mr. Chairman?

The CHAIRMAN. The clerk will report.

The CLERK. Twenty-seven members have voted aye, 11 members have voted no.

The CHAIRMAN. And the amendment is agreed to.

The question now occurs on article I of the Donohue resolution as amended by the Sarbanes substitute as amended.

All those in favor please signify by saying aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed, no.

Call of the roll is demanded and the clerk will call the roll.

All those in favor signify by saying aye. All those opposed, no.

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. Aye.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.

Mr. CONYERS. Aye.

The CLERK. Mr. Eilberg.

Mr. EILBERG. Aye.

The CLERK. Mr. Waldie.

Mr. WALDIE. Aye.

The CLERK. Mr. Flowers.

Mr. FLOWERS. Aye.

The CLERK. Mr. Mann.

Mr. MANN. Aye.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. Aye.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. Aye.  
 The CLERK. Mr. Danielson.  
 Mr. DANIELSON. Aye.  
 The CLERK. Mr. Drinan.  
 Mr. DRINAN. Aye.  
 The CLERK. Mr. Rangel.  
 Mr. RANGEL. Aye.  
 The CLERK. Ms. Jordan.  
 Ms. JORDAN. Aye.  
 The CLERK. Mr. Thornton.  
 Mr. THORNTON. Aye.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. Aye.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. Aye.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. Aye.  
 The CLERK. Mr. Hutchinson.  
 Mr. HUTCHINSON. No.  
 The CLERK. Mr. McClory.  
 Mr. McCLORY. No.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. No.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. No.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. Aye.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. No.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. No.  
 The CLERK. Mr. Fish.  
 Mr. FISH. Aye.  
 The CLERK. Mr. Mayne.  
 Mr. MAYNE. No.  
 The CLERK. Mr. Hogan.  
 Mr. HOGAN. Aye.  
 The CLERK. Mr. Butler.  
 Mr. BUTLER. Aye.  
 The CLERK. Mr. Cohen.  
 Mr. COHEN. Aye.  
 The CLERK. Mr. Lott.  
 Mr. LOTT. No.  
 The CLERK. Mr. Froehlich.  
 Mr. FROEHLICH. Aye.  
 The CLERK. Mr. Moorhead.  
 Mr. MOORHEAD. No.  
 The CLERK. Mr. Maraziti.  
 Mr. MARAZITI. No.  
 The CLERK. Mr. Latta.  
 Mr. LATTI. No.  
 The CLERK. Mr. Rodino.  
 The CHAIRMAN. Aye.

The CLERK. Mr. Chairman?

The CHAIRMAN. The clerk will report.

The CLERK. Twenty-seven members have voted aye, 11 members have voted no.

The CHAIRMAN. And pursuant to the resolution, article I, of that resolution is adopted and will be reported to the House and the committee will recess until 10:30 Monday next, Monday morning.

[Whereupon, at 7:05 p.m., the committee was recessed, to reconvene Monday, July 29, 1974, at 10:30 a.m.]



## DEBATE ON ARTICLES OF IMPEACHMENT

### Business Session, Impeachment Inquiry

MONDAY, JULY 29, 1974

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The committee met, pursuant to notice, at 11:35 a.m., in room 2141 Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino (presiding), Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Samuel Garrison III, minority counsel; Albert E. Jenner, Jr., senior associate special counsel; Bernard Nussbaum, senior associate special counsel; and Richard Cates, senior associate special counsel.

Committee staff present: Jerome M. Zeifman, general counsel; Garner J. Cline, associate general counsel; Alan A. Parker, counsel; Daniel L. Cohen, counsel; William P. Dixon, counsel; Arden B. Schell, counsel; Franklin G. Polk, associate counsel; Thomas E. Mooney, associate counsel; Michael W. Blommer, associate counsel.

The CHAIRMAN. The committee will come to order.

Before the Chair calls upon the clerk in pursuance of the procedural resolution to read article II, the Chair would like to make several announcements.

First, there has been distributed the substitute which is going to be offered by the gentleman from Missouri, and I have been advised that there is a typographical error which appears on page 2 in paragraph 3. And the word "lawfully" should be "unlawfully." And would the members please correct their copies.

Mr. HUNGATE. There is a second correction.

The CHAIRMAN. If the members will correct their copies accordingly, but the clerk will, when the substitute is being read, please insure that that is noted. The Chair would also state that there are other technical changes which will be called to the attention of the committee, and as soon as the clerk has them before him, and in typewritten form, they will be called to the attention of the members and properly distributed.

I would like to state that there are going to be several rollcall votes on the floor of the House, and it is the intention of the Chair that

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following the first quorum call or rollcall vote that there will be a recess for a period of time, which will be stated at the time that the recess will be declared, and it is the hope that we may proceed after that and in an effort to resolve this problem.

I am going to call upon the clerk, pursuant to the resolution, to read article II, and I would like to state, too, that the Chair will recognize, following that, perfecting amendments in order that we procedurally are able to allow members time for debate then on the substitute to be recognized for their 5 minutes in accordance therewith, if they so seek recognition.

I would now call upon the clerk to read proposed article II. The clerk will read.

The CLERK [reading]:

Article II.

In his conduct of the office of the President of the United States, Richard M. Nixon, contrary to his oath faithfully to execute the office and to—

Mr. HUNGATE. Mr. Chairman?

The CLERK [reading]:

Preserve, and protect and defend—

Mr. HUNGATE. Mr. Chairman, I have a substitute.

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. I have an amendment in the nature of a substitute to article II of the Donohue resolution, and, Mr. Chairman, if I may ask the forbearance of my colleagues once more before the clerk reads, there is a further typo on page 2, sub 3. It is written in at the desk. "He has," then there is an insertion, "acting personally and through his subordinates and agents." That is the insertion, and then you resume. This is sub 3 on page 2, line 1. It would read, "He has," then inserting "acting personally and through his subordinates and agents," and then it proceeds.

The clerk will read it in the proper form I apologize to the members.

The CHAIRMAN. The clerk will read the substitute.

The CLERK [reading]:

Substitute offered by Mr. Hungate.

Article II.

Using the powers of the office of President of the United States, Richard M. Nixon, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in disregard of his constitutional duty to take care that the laws be faithfully executed, has repeatedly engaged in conduct violating the constitutional rights of citizens, impairing the due and proper administration of justice and the conduct of lawful inquiries, or contravening the laws governing agencies of the executive branch and the purposes of these agencies.

This conduct has included one or more of the following:

(1) he has, acting personally and through his subordinates and agents, endeavored to obtain from the Internal Revenue Service, in violation of the constitutional rights of citizens, confidential information contained in income tax returns for purposes not authorized by law, and to cause, in violation of the constitutional rights of citizens, income tax audits or other income tax investigations to be initiated or conducted in a discriminatory manner.

(2) he misused the Federal Bureau of Investigation, the Secret Service, and other executive personnel, in violation or disregard of the constitutional rights of citizens, by directing, or authorizing such agencies or personnel to conduct or continue electronic surveillance or other investigations for purposes unrelated



to national security, the enforcement of laws, or any other lawful function of his office; he did direct, authorize, or permit the use of information obtained thereby for purposes unrelated to national security, the enforcement of laws, or any other lawful function of his office; and he did direct the concealment of certain records made by the Federal Bureau of Investigation of electronic surveillance.

(3) he has, acting personally and through his subordinates and agents, in violation or disregard of the constitutional rights of citizens, authorized and permitted to be maintained a secret investigative unit within the office of the President, financed in part with money derived from campaign contributions which unlawfully utilized the resources of the Central Intelligence Agency, engaged in covert and unlawful activities, and attempted to prejudice the constitutional right of an accused to a fair trial.

(4) he has failed to take care that the laws were faithfully executed by failing to act when he knew or had reason to know that his close subordinates endeavored to impede and frustrate lawful inquiries by duly constituted executive, judicial, and legislative entities concerning the unlawful entry into the headquarters of the Democratic National Committee, and concerning other matters.

(5) in disregard of the rule of law, he knowingly misused the Executive power by interfering with agencies of the executive branch, including the Federal Bureau of Investigation, the Criminal Division, and the Office of Watergate Special Prosecution Force of the Department of Justice, and the Central Intelligence Agency, in violation of his duty to take care that the laws be faithfully executed.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. I make a point of order on the consideration of article II.

The CHAIRMAN. The gentleman is recognized on the point of order and will state his point of order.

Mr. DANIELSON. Mr. Chairman, point of order. He has not read it in its entirety yet.

Mr. WIGGINS. I beg your pardon. I will withhold.

The CHAIRMAN. Will the gentleman withhold his point of order?

Mr. WIGGINS. Of course.

The CHAIRMAN. And the clerk will complete the reading of article II.

The CLERK [reading]:

In all of this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice and to the manifest injury of the people of the United States.

Wherefore, Richard M. Nixon, by such conduct, warrants impeachment and trial, and removal from office.

Mr. WIGGINS. Now I repeat my point of order, Mr. Chairman.

The CHAIRMAN. The gentleman from California is recognized on a point of order and will state his point of order.

Mr. WIGGINS. Mr. Chairman, my point of order is that article II fails to state an impeachable offense under the Constitution. May I be recognized on my point of order?

The CHAIRMAN. The gentleman is recognized on his point of order.

Mr. WIGGINS. Mr. Chairman and members of the committee, it is quite clear from a full reading of proposed article II that the gravamen of that article is abuse of power on the part of the President of the United States. That concept of abuse is stated in various places by use of the word misuse and in use of the word dereliction of constitutional rights as distinguished from in violation of those rights.

The question, ladies and gentlemen, is whether an abuse of power falls within the meaning of the phrase "high crimes and misde-

meanors." since we can impeach on no other basis. If it does not, then my point of order should be sustained. If it does, then we should proceed with the consideration of that article.

My problem, Mr. Chairman, is that I have no quarrel with abusive conduct when that conduct does in and of itself violate the law. In that case, then we should impeach because of those violations. I do have serious concerns as to whether or not conduct which does not violate the law, but which may be characterized by this committee or the Congress as abusive, falls within the phrase "high crimes and misdemeanors." It is apparent from the proposed article that its author believes that abusive conduct is impeachable.

My problem is this, just what is abusive conduct? What does it mean? I suggest that that is an empty phrase, having meaning only in terms of what we pour into it. It must reflect our subjective views of impropriety as distinguished from the objective views enunciated by society in its laws.

It ought to be clear to this committee, a committee of lawyers, that such a phrase as "abuse of power" is sufficiently imprecise to meet the test required by the fifth amendment. In my view, Mr. Chairman, the adoption of such an article would imbed in our constitutional history for the first time, for the very first time, the principle that a President may be impeached because of the view of Congress that he has abused those powers, although he may have acted in violation of no law.

If that is true, then we truly are ratifying the statement attributed to the now Vice President that impeachment means exactly what the Congress says it means at a given moment. By declaring punishable conduct which was not illegal when done, this Congress is raising the issue of a bill of attainder, contrary to the express terms of the Constitution. The argument of ex post facto legislation is now before us. If we are to declare punishable that conduct which is not illegal under our laws, in so doing, Mr. Chairman, we ought to recognize the momentous nature of such a decision, because we are taking a step toward a parliamentary system of government in this country rather than the constitutional system which we now have. We are in effect saying, Mr. Chairman, that a President may be impeached in the future if a Congress expresses no confidence in his conduct, not because he has violated the law, but rather because that Congress declares his conduct to be abusive in terms of their subjective notions of propriety.

In terms of the future, Mr. Chairman, what standard are we setting for the Presidents in the future? How will any future President know precisely what Congress may declare to be an abuse, especially when they have failed to legislate against the very acts which they may condemn.

I think it is holding up to a future President an impossible standard that he must anticipate what Congress may declare to be abusive in the future. Under the law, Mr. Chairman, we have no right to impose our notions of morality and propriety upon others and make it their legal duty to comply therewith. But, that is what we are doing when we say that a President may be impeached for abuses of his office when the acts of alleged abuse are not in themselves violations of the law.

I have much more to say later with respect to the take care clause, but I will reserve that until that is considered under separate subdivisions.

Mr. Chairman, I believe my point of order is well taken and should be sustained.

Mr. DANIELSON. Mr. Chairman, I would like to speak in opposition to the point of order.

The CHAIRMAN. The gentleman from California is recognized in opposition to the point of order.

Mr. DANIELSON. Mr. Chairman, I apologize to Mr. Hungate. I feel very deeply about this point of order. I feel that I must speak in opposition.

In my opinion, Mr. Chairman, this is possibly, probably—I can make that stronger—it is certainly the most important article that this committee may pass out.

The offense charged in this article is truly a high crime and misdemeanor within the purest meaning of those words as established in Anglo-American jurisprudence over a period of now some 600 years. The offenses charged against the President in this article are uniquely Presidential offenses. No one else can commit them. You or I, the most lowly citizen, can obstruct justice. You or I, the most lowly citizen, can violate any of the statutes in our criminal code. But only the President can violate the oath of office of the President. Only the President can abuse the powers of the office of the President.

When our Founding Fathers put our Constitution together, it was no accident that they separated the powers. Against the backdrop of 400 years of history of Anglo-Saxon jurisprudence they realized the need to have a device, a constitutional means, of removing from office a chief magistrate who had violated his solemn oath of office. And I respectfully submit that impeachment clause of our Constitution which, fortunately, we have to use now for only the second time, is that means.

These are high crimes and misdemeanors, meaning that they are crimes or offenses against the very structure of the state, against the system of government, the system that has brought to the American people and has preserved for the American people the freedoms and liberties which we so cherish. This is uniquely a Presidential offense, Mr. Chairman, and the most important subject of this hearing.

There are some—and I would like to respond right now—there are some among us, there are many conscientious, dedicated Americans who harbor a feeling of fear and apprehension at this proceeding. They seem—I submit that it is a sensitivity to the travail through which our Republic is now passing, but they feel, they recognize, they sense that this is a most grave responsibility and proceeding and some of them say that this should not be done because it might harm the Presidency.

Mr. Chairman, I submit that only the President can harm the Presidency. No one but the President can destroy the Presidency. And it is our responsibility acting under the impeachment clause, to preserve and protect the Presidency as we preserve and protect every other part of our marvelous structure of Government, and we do it through this—do it through this process.

Someone in his opening statement, referred to this as being a situation of “We, the people” acting. “We, the people,” are acting through this procedure, through the provisions put into our Constitution.

The American people, Mr. Chairman, are entitled to and want a Government which they can honor and respect, and they should have it. The American people, Mr. Chairman, are eager to revere their President. They are entitled to a President whom they can revere.

Mr. Chairman, I ask, "Is not the violation of the solemn oath of office an impeachable offense?" It is not found in our criminal code. It is implicit in our Constitution but it is necessarily implicit in the Constitution for otherwise why would there be an oath of office?

The offenses charged in this proposed article I respectfully submit, Mr. Chairman, are offenses which go directly to the breach of a solemn oath of office. Can anyone argue that if the President breaches his oath of office, he should not be removed?

I say not. And I respectfully submit that this point of order should be denied.

The CHAIRMAN. The Chair has heard arguments for the point of order and in opposition to the point of order and the Chair is prepared to rule.

The Chair makes reference first of all to article I, section 2 of the Constitution, which gives to the House the sole power of impeachment and in article II, section 4, the declaration that impeachment shall lie for treason, bribery, and other high crimes and misdemeanors. So the issue of impeachment and the nature of an impeachable offense is, as the gentleman knows, the very nature and subject of these proceedings, and no point of order can possibly lie in the nature of a challenge as to the impeachability of such offenses.

That is a matter, as the Constitution has already clearly stated, for the committee which has been delegated with this responsibility by the House, the House itself, and ultimately the Senate, to decide.

The gentleman will be given full opportunity to debate this question and attempt to persuade his colleagues that no grounds for impeachment have been stated in the articles. But the issue does not state a point of order. Rather, the issue presented in the point of order is a constitutional argument that must persuade the Congress. And therefore the Chair rules against the point of order.

Mr. HUNGATE. Mr. Chairman.

The CHAIRMAN. The gentleman from Missouri.

Mr. HUNGATE. Mr. Chairman, before going further, I should like to ask unanimous consent that debate on any amendment to the substitute, including amendments in the nature of a motion to strike, be limited to a period not to exceed 40 minutes, to be divided equally between the proponents and opponents of the amendment.

The CHAIRMAN. Without objection, it is so ordered.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. The gentleman is recognized.

Mr. HUNGATE. I thank the chairman.

I thank both the distinguished gentlemen from California, for drawing the issues and the problems before us in the skillful way as they have done throughout this proceeding.

Mr. Truman once said or asked people if they knew what it was like to have a load of hay fall on them, and I think this morning I know what he meant. All I can say is that sometimes when you practice law you find that the best cases do not come in through the most ideal clients. That is our problem today.

I apologize to my colleagues for the lateness with which they received my substitute, but I know all of them to be distinguished and able attorneys and conversant with the facts and problems before us here. I should make it clear that the Hungate substitute is really a distillation of the thought of many members from many areas and many differing political philosophies and the input of many of the capable members of this committee, for which I only seek to be a catalyst.

It would be rather difficult or impossible for me in 5 minutes to explain all the points that should be and will be considered and debated here. Various colleagues, I know, are knowledgeable on the various subparagraphs (1) through (5) and will outline this in more detail in our debate. I believe the gentleman from California, Mr. Wiggins, touched some elements that are correct in that basically, as I see it, article I involves obstruction of justice, standards of conduct that may be criminal, and basically perhaps what we have today involves abuse of powers, and whether we shall say that you can be President as long as you are not subject to a criminal charge, whether that is the level of conduct we require, or whether we shall set a somewhat higher standard, and whether we shall set that standard so that we will realize that the oath of office of the Presidency means what it meant to Madison and the Founders before the Constitution was even completed.

Now, some would believe that if we find any one of these five subparagraphs which support impeachment, and I think more would believe that a combination of one or more, or all of them, would support impeachment, because we do discuss and consider repeatedly violations, in many cases repetitive conduct within the article and certainly repetitive conduct—I mean within the subparagraph and certainly repetitive conduct throughout the five articles.

I would think that if only one instance of improper conduct, had occurred, and it perhaps could be quite serious, I do not know that we would be here today. I think this sort of impeachment proceeding was deliberately set up historically so that those who are in political life, those who can understand some of the pressures and nuances involved in serving in a public office try the President, a political figure, and for my part, I think there is more tolerance in such a political body than one would find in just a body without the experience, as I have said, of the pressures and difficulties in public life.

I say again if only one violation had occurred, I would doubt that we should be here. Men are human. Humans are frail. But I think we discuss, consider, and see here a consistent disregard of the law.

To give an example, I think if a man is driving in his car and he crosses the center line, that is not grounds for a whole lot of punishment, taking his license or thoroughly incarcerating him. But if he crosses the center line 15 times every mile he drives or if he insists on straddling the center line all the time, then I think we find action has to be taken.

I thank the Chairman.

THE CHAIRMAN. The time of the gentleman from Missouri has expired. I recognize the gentleman from Michigan.

MR. HUTCHINSON. Thank you, Mr. Chairman. The proposed article of impeachment now being debated charges that the President has

violated his oath of office and his constitutional duty to take care that the laws are faithfully executed. It charges that he has done so by repeatedly engaging in unconstitutional and illegal conduct.

The wording of the proposed article II raises a number of serious questions which I hope will be addressed by its proponents during the course of this debate. While I strenuously dispute as a matter of fact that the evidence establishes that the President has repeatedly engaged in unconstitutional and unlawful conduct, I am curious as to what the drafters of this article perceive to be the legal significance of the allegation that such acts have been done repeatedly.

What is the gravamen of the offense charged in this article: the supposed repetition of misconduct or the specific instances of it which are alleged?

Would any of these individual allegations standing alone support an article of impeachment? Or do they only amount to impeachable conduct when considered in the aggregate? If some would stand alone and others could not, tell us which is which. How many of these allegations must a member believe to be supported by the evidence before he would be justified in voting for the entire article?

Even if each and every allegation were proved true, is it fair or is it grossly misleading to say that the President has violated his oath repeatedly? Repeatedly means again and again. Surely this does not mean isolated or even sporadic failures of duty. It can only connote a regular persistent course of conduct warranting a belief that the alleged instances of lawlessness are characteristic and not exceptional.

Is it really fair? Does it depict the whole truth to examine the entire record of this administration during the past 5½ years, to examine the totality of countless tens of thousands of official actions taken by the President personally, by members of his White House staff and by other subordinate officials of the executive branch of Government and to cull from that huge mass of official action this relative handful of specific allegations and to derive from them the proposition that the President's conduct has been repeatedly unlawful?

Consider, for example, the question of wiretaps. I do not acknowledge that these wiretaps were unjustified or under all the circumstances illegal as the law existed at the time they took place. But even if some were, which I do not concede, in all fairness can it be said that those few wiretaps, most of which were instituted in two groups, spread over a 1-year period and the last of which terminated in February 1971 furnish evidence of repeated violation of the Constitution?

As in the case of the evidence relating to the Plumbers' operation they show a specific Presidential response to a specific and serious problem; namely, the public disclosure by leaks of highly sensitive information bearing upon the conduct of American foreign policy during that very turbulent period both domestically and internationally.

What effect—what effort has our staff made to bring before this committee a coherent comprehensive reconstruction of the claimant and the circumstances of the 1969 through 1971 period in which those wiretaps occurred?

We have heard no eloquence to stir our memories as to the violence and as to the disorder and the war which nearly had this Nation on its knees at the time that Richard Nixon took office.

The President's prosecutors would have us view the actions of which they complained in the abstract, ripped from the very context of the event which precipitated them, giving not even lip service to the serious governmental problems which they were designed, even if designed clumsily, to cope with.

Mr. Chairman, I will vote against this ill-conceived article of impeachment.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

The gentleman from California is seeking recognition?

Mr. WIGGINS. Mr. Chairman, the article having been read, is it open for amendment at any place?

The CHAIRMAN. The article is open for amendment at any point.

Mr. McCLORY. Mr. Chairman?

Mr. WIGGINS. I am prepared to offer an amendment, but if we are going to have general debate on the article I will withhold.

The CHAIRMAN. If the gentleman will defer?

Mr. WIGGINS. Surely.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Thank you, Mr. Chairman.

I would like to be recognized at this point to discuss generally this proposed article of impeachment. It seems to me that this really gets at the crux of our responsibilities here. It directs our attention directly to the President's constitutional oath and his constitutional obligation. There is nothing mysterious about this, and there is nothing evil and malicious about it. It directs the attention directly to this responsibility that is and has been reposed in the President.

This certainly is no bill of attainder. We are not thinking this up as an offense and then charging the President with a violation of it. We are calling the President's attention to the facts that he took an oath of office, and that he had in his oath of office a solemn obligation to see to the faithful execution of the laws.

This is quite different and distinct from the elements of criminality that are involved in article I charging the President with a conspiracy, and with all kinds of criminal acts of misconduct and obstruction of justice and so on—an article which I did not support because I do not believe the facts support that kind of charge.

Now, some of those who have been expressing themselves in support of article I, clearly have included feelings of deep hostility, and bitterness and political bias. On my part, article II, based on the take care clause of the Constitution which specifies a solemn obligation of the President to take care to see to the faithful execution of the laws, I want to make perfectly clear that I harbor no malice, I attribute no evil thoughts or conduct to the President of the United States. I express no bitterness, no hostility. What I do want to make clear is that the President is bound by his solemn oath of office to preserve, protect, and defend the Constitution, and to take care to see that the laws are faithfully executed.

While many of the paragraphs contained in article II may appear similar to those that are found in article I, which I opposed, it is important to note carefully that the pattern of conduct which is delineated in article I is quite distinguishable from that in article II. For one thing, I would point out there is no clear proof of conspiracy in the fact that others surrounding the President have been guilty of acts of gross misconduct. However, there is a clear violation of the President's responsibility when he permits multiple acts of wrongdoing by large numbers of those who surround him in possession of greatest responsibility and influence in the White House.

The establishment of the Plumbers, and many of the activities attributed to them are wholly unrelated to the Watergate, and that is the same case with respect to his misuse of the FBI and the CIA and the IRS. Nothing to do with Watergate for the most part. But, these are clear acts of misconduct which, it seems to me, are important for us to take note of. In other words, the acts and conduct upon which I feel an article of impeachment should be presented to our colleagues is strictly constitutional, which relates narrowly and directly to the President himself and his personal oath of office.

While this article may seem less dramatic and less sensational than the Watergate break-in and coverup, it is nevertheless a positive and specific responsibility, and a positive and responsible approach to our power on our part as investigators of misconduct.

One purpose of the impeachment process, it seems to me, is to set a constitutional standard for persons occupying the office of the President. Thus, if we approach our task in constitutional terms, we will be setting such a standard. I view the duty of the House of Representatives as something other than serving as a district courthouse to hold the President accountable for statutory violations of the criminal law. I think we can agree that the President should not commit crimes, but if we are to set a constitutional standard, we must take a different view of the facts. We must phrase our charges in constitutional terms so that the Presidents to come may know what is meant by our action. If we are to establish our proceedings as a guide for future Presidents, we should speak in terms of the Constitution and specifically in terms of the President's oath and his obligation under the Constitution. It will be of limited value to admonish a future President not to obstruct justice or engage in a coverup. However, it will aid future Presidents to know this Congress and this House Judiciary Committee will hold them to an oath of office and an obligation to take care to see that the laws are faithfully executed.

I realize that there is no nice way to impeach a President of the United States. I realize also that the distinction between the criminal conspiracy theory of article I and the purely constitutional aspects of article II may be misunderstood. But, as a member of this committee, the most I can do is to exercise my independent judgment and to search deeply my own conscience. Both reason and wisdom dictate the judgment I am going to make in support of this article II is right.

Thank you, Mr. Chairman.

The CHAIRMAN. The time of gentleman has expired.

Under the rules of Jefferson's Manual and the rules of the House, the Chair is constrained to state that perfecting amendments take



precedence, and the Chair did state this. The members, however, who want to speak to the substitute will have their time reserved for them.

I am going to recognize at this time those members who wish to offer perfecting amendments.

I recognize the gentleman from California, Mr. Wiggins.

Mr. WIGGINS. Thank you, Mr. Chairman. I have an amendment at the desk.

I ask unanimous consent, Mr. Chairman, that my amendment be deemed to apply to the language in subparagraphs 1 and 3, because those are exactly the same words, and as you know, that new language was read in as an addition here just a few moments ago. Does Mr. Hungate understand my point, since it is his substitute?

Mr. HUNGATE. As I understand the gentleman, the amendment would be substantially the same in both the paragraphs 1 and 3?

Mr. WIGGINS. Would be exactly the same.

Mr. HUNGATE. And I have no objection, Mr. Wiggins.

The CHAIRMAN. So the Chair would understand that if the amendment were disposed of, it would be disposed of—

Mr. WIGGINS. As to both.

The CHAIRMAN [continuing]. As to 1 and 3.

Mr. WIGGINS. Certainly. I would like to do it all at one time.

The CHAIRMAN. The clerk will read the amendment.

The CLERK [reading]:

Amendment by Mr. Wiggins.

In subparagraph (1) after the word "has," strike the words "acting personally and through his subordinates and agents" and add the following: "personally and through his subordinates and agents acting with his knowledge or pursuant to his instructions."

The CHAIRMAN. The gentleman from California is recognized.

Mr. WIGGINS. Thank you, Mr. Chairman.

Mr. Chairman, I believe my intent is evident from the words used, and I merely am trying to avoid any possible ambiguity created by the language which is now in subparagraph (1) and subparagraph (3).

Going back to the introductory words in article II, it states, in essence, Richard Nixon has repeatedly engaged in conduct, et cetera. It makes it clear that we are talking about Richard Nixon's acts, and yet, when we move to subparagraph (1) we deviate from that standard and we say, as presently proposed, that he acted personally and through his subordinates and agents.

I have no quarrel with impeaching President Nixon by reason of the acts of his subordinates and agents, so long as we know that we are talking about those acts of his subordinates and agents which were done with his knowledge or pursuant to his instructions. And we are not seeking to impeach the President vicariously by reason of the acts of others about which he had no knowledge, and contrary perhaps to his instructions.

I have every reason to expect, although I have not asked my friend, the gentleman from Illinois, to support such an amendment, because this is, in essence, what he was talking about yesterday, that he was willing to impeach the President by reason of his personal misconduct, but was not willing to impute vicariously the acts of others.

My amendment to subparagraph (1) and subparagraph (3) is to make this concept abundantly clear, and I urge its acceptance.

Mr. COHEN. Would the gentleman yield?

Mr. WIGGINS. Of course, I will yield.

Mr. BROOKS. Mr. Chairman?

Mr. WIGGINS. I have yielded to the gentleman.

The CHAIRMAN. The gentleman still has time. Mr. Cohen.

Mr. COHEN. I thank the gentleman for yielding.

Mr. Wiggins, under your proposal that would make it personally and through his subordinates and agents acting with his knowledge or pursuant to his instructions, would that also cover such situations such as where his agents may have acted without the President's personal knowledge in advance, but such acts were thereafter ratified or condoned by the President?

Mr. WIGGINS. Yes. I would not necessarily exclude that. I realize that a President must of necessity act through subordinates, and that the acts of subordinates may not be personally known to the President. But so long as those acts are pursuant to his instructions, or perhaps policy, to use a word that has been used around here, or ratified and condoned by him as his acts, then I have no objection to attributing them to the President.

Mr. COHEN. So, if he acquired knowledge thereafter and ratified in effect the prior acts, that would be within the scope of your amendment. Thank you.

Mr. WIGGINS. I will submit that question.

Mr. McCLORY. Would the gentleman yield to me?

Mr. WIGGINS. If I have time, I will yield first to the gentleman from Illinois.

The CHAIRMAN. The gentleman from California knows that pursuant to the rule that we have adopted, those supporting his amendment and speaking in support of it will have 20 minutes in entirety.

Mr. WIGGINS. I think then that I had best reserve whatever time I have and permit others to speak, Mr. Chairman.

Well, now, Mr. Chairman, am I in effect forgoing the balance of my time if I reserve? It is not my understanding that I personally have 20 minutes.

The CHAIRMAN. No; you personally do not have 20 minutes. But those in support of your amendment have 20 minutes, and therefore—

Mr. WIGGINS. If I have used up my time, of course, I am out of time and others can speak.

The CHAIRMAN. The gentleman still has 1½ minutes.

Mr. WIGGINS. I yield to the gentleman from Illinois.

The CHAIRMAN. The gentleman from Illinois.

Mr. RAILSBACK. I thank the gentleman for yielding.

I have only the same, I think the same questions that were raised by the gentleman from Maine. What worries me about this, the President, in some cases, perhaps had knowledge not initially, perhaps, but learned of improper activities and saw fit to either condone or acquiesce in such activities, and what I am wondering is if it is the intent of his amendment, and again let's make it very clear, is it the intent of your amendment to rule out that kind of what I believe is serious misconduct?

Mr. WIGGINS. It is not my own intent to rule it out, but I do not wish to say I embrace it. I will, as you said yesterday, let the words speak for themselves.

Mr. SEIBERLING. Will the gentleman yield? Will the gentleman yield?

Mr. WIGGINS. Of course, if I have time.

Mr. SEIBERLING. I would like to ask the gentleman if his amendment would cover a situation such as we have testimony on, where the President would give instructions sometimes saying, "Now, I want you to get this done, but I don't care how you do it, don't bother me with the details." Would that be sufficient to cover the instructions under the gentleman's amendment?

Mr. WIGGINS. Well, I think the instructions are subject to interpretation. I know the incident to which the gentleman refers, and I could not conceive that the President was by that instruction authorizing the doing of an illegal act. So long as the act is consistent with a reasonable interpretation of his policy and direction, I have no quarrel with attributing that conduct to the President.

The CHAIRMAN. The time of the gentleman from California has expired.

I recognize the gentleman from Texas.

Mr. BROOKS. Mr. Chairman, I oppose the gentleman's motion. The specific act included within the scope of this article involved an awesome array of impeachable offenses against the U.S. Constitution and the American people. The evidence that we have gathered clearly establishes that Richard M. Nixon and his agents sought and obtained confidential tax information from the Internal Revenue Service in a manner unauthorized by law and for unlawful purposes. Specifically he and his subordinates made repeated attempts to influence the selection of citizens to be targeted for audit and other special action by the Internal Revenue Service.

In a sworn affidavit to this committee, Johnnie Walters, former IRS Commissioner, stated that in the summer of 1972 John Ehrlichman requested the IRS to check out the income tax returns of Democratic National Committeeman Lawrence O'Brien. The IRS checked O'Brien's returns and conveyed the relevant information to Ehrlichman through then Secretary of the Treasury Shultz. Ehrlichman was not satisfied and because of his demands, O'Brien was interviewed on August 17, 1972. The IRS furnished a copy of the O'Brien conference report to Secretary Shultz. A short time later Shultz informed Walters that Ehrlichman was still not satisfied. Walters told Shultz that there was nothing else the IRS could do.

On August 29, 1972, in a joint telephone call to Ehrlichman by Secretary Shultz, Walters and his assistants IRS Commissioner Roger Barth, Ehrlichman was told that O'Brien's returns were closed, that there was nothing further for IRS to do.

Ehrlichman then told Walters, "and I wanted them to turn up something and send him to jail before the election and unfortunately it didn't materialize."

Ehrlichman told Walters, and I would repeat that that is not that—the right quote. I turned to the wrong page. What Ehrlichman said

on page 235 was, indicating disappointment, "and he said to me I am god-damned tired of your foot dragging tactics." And then when Ehrlichman was so interested in the IRS status of O'Brien's operation, in testimony before the Watergate Committee Ehrlichman arrogantly stated the reason that—I previously stated. He wanted something turned up before the election. Unfortunately it didn't materialize.

On September 11, 1972, John Dean gave Walters a list of Democratic Presidential nominee staff members and campaign contributors, instructing the IRS to begin investigations or examinations of the people named on the list. Walters testified that he advised Dean that compliance with the request would be disastrous for the IRS and for the administration, and that he would recommend to Shultz that the IRS do nothing with the request.

Four days later, H. R. Haldeman and Mr. Nixon met and discussed among other things Dean's working through the IRS. Our transcript of the September 15 meeting had the following exchange:

HALDEMAN. Between times, he is doing, he is moving ruthlessly on the investigation of McGovern people, Kennedy stuff, and all that, too. I just don't know how much progress he is making because I—

PRESIDENT. The problem is that's kind of hard to find.

HALDEMAN. Chuck—Chuck has gone through, you know, has worked on the list and Dean's working the thing through IRS and, uh, in some cases I think some other (unintelligible) things he has turned out to be tougher than I thought he would which is what—

PRESIDENT. Yeah.

Now, later Dean joined the President and Haldeman and continued their meetings. We have not received a tape recording of this portion of the conversation but Dean testified that at that meeting there was a discussion of the unwillingness of the IRS to follow up on the White House directive.

In his testimony the following exchange took place between Mr. Doar and Mr. Dean:

Mr. DOAR. Did you discuss your assignment with respect to the IRS with the President during your meeting on September 15?

Mr. DEAN. I am not sure how directly or specifically it came up. But there was indeed a rather extended discussion with the President on the use of IRS. He made some rather specific comments to me which in turn resulted in me going back to Mr. Walters again.

Mr. DOAR. When you say the use of IRS, what are you talking about?

Mr. DEAN. Well, as I recall the conversation, we were talking about the problems of having IRS conduct audits and I told him that we hadn't been very successful at this because Mr. Walters had told me that he just didn't want to do it. I did not, I did not push him. As far as I was concerned, I was off the hook. I had done what I had been asked. I related this to the President and he said—

The CHAIRMAN. The time—

Mr. BROOKS. May I complete this paragraph?

and he said something to the effect, well, if Shultz thinks he has been put over there to be some sort of candy ass, he is mistaken and if you have got any problems you just come tell me and I will get it straightened out.

The CHAIRMAN. The time of the gentleman has expired.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. The gentleman from Indiana is recognized in support of the amendment?

Mr. DENNIS. Correct, Mr. Chairman.

The CHAIRMAN. The gentleman is recognized for 5 minutes.

Mr. DENNIS. Mr. Chairman and my colleagues, I think this amendment is a very important one which we all ought to give careful consideration. Actually it would be my belief and certainly my hope that this is what the Hungate substitute means even as unamended because when you say acting personally and through your subordinates and agents, surely that means through actions of theirs which you have ordered or of which you have proved under normal principles of law and in any kind of a criminal or quasi-criminal situation such as we have here.

Mr. HUNGATE. Would the gentleman yield briefly?

Mr. DENNIS. I would appreciate it—I would like to yield to my friend, Mr. Hungate, and I will if it is very brief.

Mr. HUNGATE. I believe the gentleman correctly states the intention, the gentleman from Indiana correctly states the intention of the drafting of the Hungate substitute at that point and really my argument would be that the amendment is superfluous for that reason. The gentleman—I agree I think with his remarks.

Mr. DENNIS. I am very glad to know that is what the gentleman means and knowing the gentleman's capacity as a distinguished lawyer I felt confident that that is what he meant. But that being what he meant, in other words, it does have to be with the knowledge or pursuant to the instruction of the principle, there can be no harm in writing that in and I think it is extremely important that we do so.

For one thing, if we voted such an amendment down which the author of the original amendment agrees means what I say it means, it then seems to indicate that the majority of the committee thinks it means something else. And for another thing, it is quite important that this principle be nailed down here because as you go through this, listen to the argument, you hear an awful lot about Haldeman. You hear an awful lot of Ehrlichman. Very rarely do you hear the mention of the President and it is important that we keep in mind that there has got to be a connection, that he is the man we are going to impeach, if anyone.

This is just a matter of ordinary fairness. We all have staffs of our own, not nearly as large as the President of the United States, but I think everyone of us has had enough experience to know what people on your staff can get you into some very, very embarrassing situations sometimes and things which you knew nothing about, didn't authorize, didn't want them to do, and to be held responsible therefor, and this is just an illustrative thing, but one which could come home because it is kind of familiar.

Now, I would—I would say, of course, ratification, sure, that is ordinary law. If your agent went out and did something improper and I said, well, fine, that is great, I am all for it, approved and ratified it afterwards, in my judgment that is ordinary law, too. But otherwise you have got to have an instruction to the man, you have got to have

knowledge of what he is doing, or you have got to approve it and ratify it after he has done it and——

Mr. DRINAN. Would the gentleman——

Mr. DENNIS. Mr. Hungate and I agree that is really all we are saying here. We are just making crystal clear what he and I agree is already reasonably clear.

Mr. HUNGATE. Would the gentleman yield?

Mr. DENNIS. Under the factual circumstances here and under the frequency with which we hear testimony about other individuals and the infrequency with which we hear anything about the President, and the importance of not forgetting the necessity and the importance of the connection, I think in simple fairness that this is——

Mr. HUNGATE. Will the gentleman yield?

Mr. DENNIS [continuing]. This is a reasonable and important amendment and I hope it will——

Mr. HUNGATE. Will the gentleman yield, please?

Mr. DENNIS. Briefly, I yield to my friend from Missouri.

Mr. HUNGATE. I think I would just let him, perhaps, and I would not——

Mr. DENNIS. I would not want to do——

Mr. HUNGATE [continuing]. To the extent of our agreement, certainly ratification is within our agreement, but I would understand that the President acts through subordinates, and I am not talking about the rural mail carrier, I am talking about Haldeman, Ehrlichman, Mitchell, and Dean and I think the language in the original substitute speaks for itself and I just point out I think there is an area of agreement but I believe I would oppose——

Mr. DENNIS. I understood my friend to say that he agreed with the language "acting with his knowledge or pursuant to his instructions."

I hope he did, but if he does not agree with that, then the amendment becomes tremendously important. We have just got to have it.

Mr. DRINAN. Would the gentleman yield?

Mr. HUNGATE. I could not agree with that language, I regret to inform——

Mr. DENNIS. Well, if the gentleman does not agree with it, then we are in a situation where it is going to be suggested that the President can be impeached for actions of his subordinates who were acting without his knowledge, not pursuant to, even against his instructions, I would assume, and without any ratification thereafter, and really and truly, I wonder seriously whether the majority of the committee which has already indicated it wants to bring articles of impeachment want to take that line. That is not, I think, even in accordance with the Constitution of the United States.

Mr. DRINAN. Would the gentleman——

Mr. HUNGATE. I would caution the gentleman not to do that.

Mr. DRINAN. Would the gentleman yield?

The CHAIRMAN. The time of the gentleman from Indiana has expired.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. Mr. McClory.

Mr. McCLORY. Mr. Chairman, I would like to speak briefly in opposition to the amendment.

The CHAIRMAN. The gentleman is recognized.

Mr. McCLORY. I do want to say I did have the privilege of taking part, a small part in the drafting of this proposed article and I think it is a good article the way it is drafted at the present time. I interpret this article as that which embodies the "take care" clause of the Constitution and I would just like to read just one line from this volume which is made available to Members of the Congress interpreting the Constitution and with regard to the "take care" clause.

The volume reads as follows:

The Constitution does not say that the President shall execute the laws but that he shall take care that the laws be faithfully executed: that is, by others who are commonly but not always with strict accuracy termed his subordinates.

In other words, what we are charging here is that the President has a responsibility to see to the faithful execution of the laws. We are not charging that he has gone out and personally committed some criminal act but we are saying that there are 20-some persons who are either charged or convicted or serving time or have already completed their service of time, of being engaged in criminal conduct in and around the White House, some of his top aides, and I think that this is involved here.

The President can only act through his agents and subordinates, but is he tolerating and has he tolerated this kind of conduct in the White House and in and around him? Well, it seems to me that that is the charge we are making and I think that to erode this charge in any way would be a mistake and I think that the article is adequate the way it is and I hope the amendment will be rejected. I yield back the balance of my time and you are perfectly free to get time from the chairman on the amendment.

The CHAIRMAN. I recognize the gentleman from California, Mr. Danielson.

Mr. DANIELSON. Mr. Chairman, I, too, oppose the amendment offered by my colleague, Mr. Wiggins. I respectfully submit if this amendment were put into the article, it would unduly and unnecessarily limit and restrict the proofs which the managers will be compelled to make before the Senate. I concede that the managers must prove each and every charge before it can serve as a basis for an impeachment, but they should not be unreasonably and unrealistically limited in that proof. The wording of this proposed amendment would require that there is proof that the President in each and every instance knew in advance of the precise act that was going to be carried out by his agents and subordinates.

I respectfully submit that that is unrealistic. Let's look at, for example, Mr. Segretti. Do you suppose as a—is it reasonable to suppose that if Mr. Segretti, if we were to prove that he was authorized by the President to commit these dirty tricks, do you suppose that he picked up the phone every time just before he did one of them and called the President, and said, "Mr. President, I am now about to order 400 pizzas for Mr. Muskie's fundraiser?" That is unrealistic and yet the language of Mr. Wiggins' amendment would require that type of prior action by the President in each and every instance.

I respectfully submit that the managers before the Senate must prove each and every charge against the President, but this must be done in the context of the real world.

If they should prove that the President knowingly and intentionally set one of these forces in motion, then the President is responsible for the natural and probable consequences of having set that force in motion.

I mention Segretti's dirty tricks. This goes to many other things. Let's take a look at the Watergate burglary. Someone mentioned properly the other day that it was improbable that the burglars called the President down in Key Biscayne and said—I believe it was my colleague, Mr. Rangel, "Mr. President, we are about to make a hit." Of course, they didn't. But if it can be shown that he set this force in motion and that the activities of the perpetrators were the natural and probable culmination of the force he set in motion, then I submit that he is responsible.

You know, we hold the President to a higher standard of conduct than that of the marketplace. He is the person who is to set the moral and ethical standards of the Nation, of the entire Republic. I submit that Mr. Wiggins' amendment would unduly and unnecessarily restrict proof and for that reason it should be defeated. I yield to my—

Mr. DENNIS. Would the gentleman yield?

Mr. DANIELSON. To Father Drinan.

Mr. DRINAN. Thank you very much for yielding, and I would like to raise a basic question as to the authorization that is in the proposed amendment by quoting the President just before the establishment of the Plumbers. The President speaking to Mr. Haldeman and Mr. Colson according to Mr. Colson's affidavit in the Ehrlichman case, said this:

The President said: "I want these leaks to be stopped. I don't want to be told why it cannot be done. I don't want excuses. I want results. I want it done, whatever the cost."

I have difficulty in accepting the proposed amendment in view of this type of blanket authorization. I yield back to the gentleman.

Mr. DENNIS. Will the gentleman yield?

Mr. SEIBERLING. Mr. Chairman, I would like to add one more point.

Of course, I do not believe and I do not think any other member believes that the President should be held responsible for the acts of his subordinates under a general doctrine of respondeat superior which simply says that he is liable for whatever his agents do within the scope of their general authority, but where the President has failed to take the actions to make sure that his agents have stayed within the scope of their legitimate authority and furthermore, as Father Drinan has indicated, has told them, "I don't care how you do it, just get it done," implying that he didn't care about the niceties of the law or anything else, why, we have a totally different situation and yet the amendment proposed would not take into account that type of situation.

Mr. DANIELSON. I should like to conclude by stating, Mr. Chairman, that if the President set forth a general policy or general instruction and pursuant thereto his aides misuse the President's power, then the President alone can be held to account.

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. The time of the gentleman has expired. The Chair would like to observe that the proponents of the amendment have con-



sumed 10 minutes and those in opposition have consumed 12 minutes and the gentleman from New Jersey, Mr. Sandman, is recognized in opposition to the amendment.

Mr. SANDMAN. Oh, no. I want to be recognized in support of the amendment, sir.

[Laughter.]

Mr. SANDMAN. It wouldn't be truthful—

The CHAIRMAN. The gentleman is recognized for 5 minutes.

Mr. SANDMAN. It would be untruthful for me to say I am surprised because so many things have happened here that would surprise anybody, so I guess we are following a normal course. But isn't this really the crux of what it is all about? The gentleman from California truthfully adds only two words, that is all he adds, for him to be responsible so that he can be removed from office.

My colleague from California says he either has to have knowledge of the wrongdoing before it happens or he has to be the person directing that the wrong be committed.

Now, maybe we are making new laws for Presidents and I want to say to my colleagues on the other side some day you might have a Democratic President and you want him to live up to all these kinds of new laws that you are making. We heard yesterday that the fifth amendment and due process has become outmoded. You want that to apply to your Presidents like you are trying to apply it to this one. You want all of these things to be done the hard way.

Now, let's go through just a couple of things. And I am not going to prolong the argument on specificity, that long word.

But, isn't this why you will not agree to that particular thing? Which one of these abuses are you going to attempt to prove, which one of them?

And now we understand that the gentleman from California, Mr. Danielson, says that it is all right even if you can show that the President did not know about it, or that he did not direct it. No other human being can be held responsible for the acts of his agents in any kind of a criminal conviction unless he has one or the other of those conditions present.

Mr. DANIELSON. Would the gentleman yield for a response?

Mr. SANDMAN. When I am through if I have some time.

Now, I have asked that we make a simple sentence out of each charge. The opposition have danced around that request for several days.

Now, this I think points to precisely why you will not do it. Through some mistake I suppose I got some of the arguments that the staff gave fellows on that side to use, but one of these things starts out with early 1970.

Mr. HUNGATE. Pardon me.

Mr. SANDMAN. Haldeman directed Mollenhoff. It is my time. That does not say that the President did it, it says that Haldeman does. That was in 1970.

The next thing that you have here on page 2 is John Caulfield, a member of Dean's staff, he did something at the request of Haldeman. It does not say at the request of the President.

Now, are you talking about the incident of March 13? We are entitled to know because if that is the one you are concerned about you are not going to have much of a case.

And then you have another one here in the spring of 1972, Ehrlichman wanted some information on O'Brien, but there is nothing in the information in front of me here that was handed to me by the staff that that involves the President.

Another time Ehrlichman—

Mr. HUNGATE. Would the gentleman yield for a question?

Mr. SANDMAN. Not yet. Ehrlichman told Shultz. It does not say the President told Shultz.

Then we get down to Ehrlichman told Kalmbach. The President did not tell Kalmbach. Ehrlichman told Kalmbach, and this is another date in September 1972. Is that the one that you are going to rely on? We should know.

Now, in addition to that, the biggest one of all that you are relying upon, apparently is the conversation of September 15, 1972, where if you listen to that tape there is no question that the President is extremely disturbed on what Dean is telling him, and it is there that he explodes about Shultz. And these are ugly words taken by themselves, they are terrible. But, the important thing about that conversation, September 15, 1972, there is no proof that has been presented by this committee or any other committee that shows that the President followed that up by talking to Shultz or anyone else.

And in addition to that, why don't we for the first time admit that not a single audit was made on a single soul on that list. This is important. This again is why you would not agree on specifics. You will not nail down one date, that one act, and now low and behold, you are taking away the right of requiring that the President have knowledge of the wrongdoing or that he direct it. You are entirely wrong and you know it. This should be adopted.

The CHAIRMAN. The time of the gentleman has expired.

Mr. HOGAN. Mr. Chairman?

The CHAIRMAN. I recognize the gentleman from Maine.

Mr. COHEN. Thank you, Mr. Chairman.

Mr. Sandman just indicated that the motion of Mr. Wiggins adds just two things. But, he failed to state that it omits one very important thing, and that is the question of ratification. And I notice that the gentleman from California was rather reticent about expressing this word "ratification" in his proposed amendment.

Now, there are two major areas which are of concern to me in this subject of abuse of agencies under the Internal Revenue Service and the FBI. Now, for example, we do have direct evidence before this committee, taken before this committee and given by John Dean, that on September 11 he did have a conversation with the Director of the Internal Revenue Service during which time he presented a list of political enemies for the purpose of having those enemies audited. Now, there is no evidence before this committee, in my opinion, that would justifying saying the President knew in advance of Mr. Dean's activities.

However, on September 15, the conversation to which Mr. Sandman just referred to, we do have direct evidence that the President was, indeed, interested in having this matter pursued. Mr. Sandman forgot

to indicate that or failed to point out, I should say, that we were missing 17 minutes of this September 15 tape which was not presented to the committee, which we have subpoenaed. This is the portion of the tape, according to Mr. Dean, whereby the President directed Dean to go back and see George Shultz and if he did not get cooperation to let him know.

Now, the question is, is Dean credible? Well, we have direct evidence from the Internal Revenue Commissioner who testified before the Senate select committee that, indeed, Dean did come back to him on September 26, just several days after his conversation with the President, presenting a reduced list and again asking for audits.

Now, I suggest and submit to this committee that the President's activities on September 15 would, indeed, constitute a ratification of the prior act, which would make him responsible for such activities.

With respect to the FBI abuse, I am referring specifically to the investigation of Daniel Schorr, that there is evidence before this committee that Daniel Schorr did criticize one of the President's speeches, and that while aboard Air Force One, Mr. Higby and Mr. Haldeman asked the FBI to conduct an investigation. Again we have no evidence before us to say that the President knew that they had called while aboard Air Force One to ask for that investigation. But we do have direct evidence before the committee, taken from the lips of Mr. Colson, and Mr. Colson told this committee that once that FBI investigation was exposed by the press, that he then came to the President and said we've got a problem here, we are in a jam, what do you think about sending out a statement that indicates that Mr. Schorr is being investigated because we are considering him as a consultant to the White House, to which the President approved.

I would submit to this committee that that in turn would constitute a ratification of the prior activities on behalf of the FBI, which I think were an abuse.

And for those reasons, I cannot, without express wording in the motion offered by Mr. Wiggins, support that without the word ratification.

And I yield to the gentleman from Virginia, Mr. Butler.

Mr. BUTLER. I thank the gentleman from Maine. I just would take 1 moment, but I feel like we ought to complete what was said by the gentleman from Texas, Mr. Brooks, with reference to the O'Brien investigation, and point out that there is among the evidence which was brought to our attention the affidavit of Mr. Thompson with reference to the conversation with Mr. Fred Buzhardt on behalf of the White House in which he advised on September 15, 1972, Dean reported on the IRS investigation of Larry O'Brien. There would be some question in my mind under this amendment as to whether that would, in fact, be relevant and admissible, but under the proposed amendment, the substitute by Mr. Hungate, I am quite satisfied that it would.

In my judgment, the proposal by Mr. Wiggins expressly excludes the opportunity for ratification and evidence of ratification.

Mr. WIGGINS. Would the gentleman yield on that?

Mr. BUTLER. And I think that is very significant.

The time is not mine.

Mr. WIGGINS. Would someone yield?

Mr. COHEN. I would yield to the gentleman.

Mr. WIGGINS. It is not my intention as the maker of the motion to exclude the concept of ratification. That is not my intention. My words were only intended to convey to the gentleman that I did not accept the view that the facts constituted a ratification, but that the issue of ratification is still before us in terms of my language.

Mr. COHEN. I yield to the gentleman from Maryland.

Mr. HOGAN. I thank the gentleman for yielding, and I agree with my colleagues who say that we cannot impeach the President for the wrongdoing of his aides. I have said so myself.

I think there is a very strong case of personal culpability on his part, as Mr. Cohen has indicated, and there are a number of them, and in the short time remaining, I will try to hit some of them myself.

We have his words on record, but one of the strongest things of personal involvement to me is when the Department of Justice files briefs in the *Ellsberg* case and says that there is no record of any wiretaps or any overheard conversations of Ellsberg. The reason they filed those briefs is because it was not in the files of the FBI. And why was it not in the files of the FBI? Because the Assistant Attorney General, Mardian, flew to San Clemente and personally discussed the matter with the President, not his aides, personally with the President and he said what shall I do with these records, and the President said deliver them all to the White House. And Mr. Mardian testified that he delivered them to the Oval Office. When he was asked, well, to whom did you deliver them, he said, I would rather not say. Well, who sits in the Oval Office except the President? They were then given to Ehrlichman, and Ehrlichman kept them in his files outside of the records of the Department of Justice.

This is one of the reasons the *Ellsberg* case was dismissed, which I think was a calamity.

In February 1973, when Time magazine came out with a story about a White House wiretap program, the President personally approved the cover story, as he did in the *Daniel Schorr* case, and there was no such wiretap program.

The CHAIRMAN. The time of the gentleman has expired.

Mr. HOGAN. May I have another 30 seconds with unanimous consent?

The CHAIRMAN. Well, there are 3 minutes remaining in support, or in opposition to the amendment.

Mr. HOGAN. Could I be recognized for one of those 3 minutes, Mr. Chairman?

The CHAIRMAN. The gentleman will be recognized.

Mr. HOGAN. He denied the existence of the wiretap program when Time Magazine came out with the story. That is in February 1973.

In May 1973, he publicly states that he, the President, personally had authorized and directed the electronic surveillance of 17 persons. A number of these wiretaps were blatantly illegal. There was no justification for them whatsoever under criminal or domestic security bases. And is it reasonable for reasonable and prudent men to conclude that White House aides would tap the phone of the President's own brother without his approval in advance? I think there is ample material linking impeachable offenses directly to the President, not to his aides. Directly to him.

I agree we should do that, and I think we have done so.

The CHAIRMAN. The 1 minute of the gentleman has expired.

There are 5 minutes remaining to those in support of the amendment and 2 minutes remaining to those in opposition to the amendment. And I think the Chair will, unless there are those who wish to be recognized at this time for the short 2 minutes, otherwise there is a rollcall vote, and the vote is on the conference report of military procurement authorization, and the Chair will defer calling on any member on either side until we have returned from the rollcall vote at 2:30 p.m. We will recess until 2:30 p.m.

[Whereupon, at 12:55 p.m., the committee was recessed, to reconvene at 2:30 p.m. this same day.]

#### AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

At the time the committee recessed, the opponents of the amendment of the gentleman from California had 2 minutes left and having consumed 18 minutes, and the proponents of the gentleman's amendment had consumed 15 minutes and have 5 minutes left.

I will recognize now the gentleman from—Mr. Mayne.

Mr. MAYNE. Thank you, Mr. Chairman.

I must speak in opposition to the amendment of my friend from California because I certainly do not want to do anything to dilute or limit in any way whatever responsibility the President may have for the very outrageous attempts to use the Internal Revenue Service for political purposes.

I consider the evidence shows that the approaches that were made by Mr. Dean and Mr. Ehrlichman to Commissioner Randolph Thrower and Commissioner Johnnie Walters to be absolutely indefensible. Our tax collection system in this country is based on a voluntary contribution assessed and paid by people on a voluntary basis and it will certainly be destroyed if people cannot have confidence that it is not being used to reward political friends and to harass political opponents.

I think that not only does the President have a responsibility not to directly approve such indefensible action but he has a responsibility not to ratify it after it has occurred and has a responsibility over and above that to have enough idea of what is going on in his administration to be very sure that this kind of political prostitution of Internal Revenue Service does not occur. There is nothing in this record which to me is more disappointing or more cause for concern of the continuation of free government than the way in which this Internal Revenue Service was attempted to be used for this base purpose.

The CHAIRMAN. The time of the gentleman has expired.

All time for those in opposition has expired. I recognize—is there anyone seeking recognition in support of the amendment?

Mr. SMITH. Mr. Chairman?

The CHAIRMAN. Mr. Smith.

Mr. SMITH. I would like to yield my time to the gentleman from California if he wishes some more.

Mr. WIGGINS. I appreciate that courtesy, Mr. Smith, but it is not my intention to use any more time. I think the case has been made.

Mr. SMITH. I yield back the balance of my time, Mr. Chairman.

The CHAIRMAN. The question occurs now on the amendment offered

by the gentleman from California. All those in favor of the amendment please signify by saying aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The noes appear to have it.

Mr. SANDMAN. On that I demand the yeas and nays.

The CHAIRMAN. The gentleman from New Jersey demands the yeas and nays. The clerk will call the roll. All those in favor of the amendment of the gentleman from California please signify by saying aye. All those opposed, no. The clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. No.

The CLERK. Mr. Flowers.

Mr. FLOWERS. No.

The CLERK. Mr. Mann.

Mr. MANN. No.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. No.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. No.

The CLERK. Mr. Danielson.

Mr. DANIELSON. No.

The CLERK. Mr. Drinan.

Mr. DRINAN. No.

The CLERK. Mr. Rangel.

Mr. RANGEL. No.

The CLERK. Ms. Jordan.

Ms. JORDAN. No.

The CLERK. Mr. Thornton.

Mr. THORNTON. No.

The CLERK. Ms. Holtzman.

Ms. HOLTZMAN. No.

The CLERK. Mr. Owens.

Mr. OWENS. No.

The CLERK. Mr. Mezvinsky.

Mr. MEZVINSKY. No.

The CLERK. Mr. Hutchinson.

Mr. HUTCHINSON. Aye.

The CLERK. Mr. McClory.  
 Mr. McCLORY. No.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. Aye.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. Aye.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. No.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. Aye.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. Aye.  
 The CLERK. Mr. Fish.  
 Mr. FISH. No.  
 The CLERK. Mr. Mayne.  
 Mr. MAYNE. No.  
 The CLERK. Mr. Hogan.  
 Mr. HOGAN. No.  
 The CLERK. Mr. Butler.  
 Mr. BUTLER. No.  
 The CLERK. Mr. Cohen.  
 Mr. COHEN. No.  
 The CLERK. Mr. Lott.  
 [No response.]  
 The CLERK. Mr. Froehlich.  
 Mr. FROEHLICH. Aye.  
 The CLERK. Mr. Moorhead.  
 Mr. MOORHEAD. Aye.  
 The CLERK. Mr. Maraziti.  
 Mr. MARAZITI. Aye.  
 The CLERK. Mr. Latta.  
 Mr. LATTA. Aye.  
 The CLERK. Mr. Rodino.  
 The CHAIRMAN. No.  
 The CLERK. Mr. Chairman?  
 The CHAIRMAN. The clerk will report.  
 The CLERK. Nine members have voted aye, 28 members have voted no.

The CHAIRMAN. And the amendment is not agreed to.

The gentleman from California.

Mr. WIGGINS. I have an amendment at the desk.

The CHAIRMAN. The clerk will read the amendment.

The CLERK [reading]:

Amendment by Mr. Wiggins.

In the Hungate substitute, strike from subparagraph 4 the words "and concerning other matters."

The CHAIRMAN. The judgment is recognized.

Mr. WIGGINS. Ladies and gentlemen of the committee, this raises once again the question which was debated at some length concerning specificity. I call your attention to the wording of subparagraph 4. It charges the President with failing to take care that the laws were faithfully executed by failing to act in two respects. One, with respect

to the unlawful entry into the headquarters of the Democratic National Committee, and two, with respect to other matters.

It is my view, Mr. Chairman, that this pushes beyond all reason the desire, apparent desire on the part of the majority to not specify with particularity that conduct which they condemn. I can think of nothing more vague nor uncertain than the language "concerning other matters."

If we start from the premise required by the Constitution that a defendant in any proceeding and especially in these is entitled to reasonable notice of the nature of the charges against him, then I ask you what notice is afforded by the charge that he failed to act concerning other matters?

We should have extended debates on this, Mr. Chairman. I would hope that the author of the substitute would state with particularity the other matters if he wished to rely upon them, but failing that, it seems to me appropriate as a matter of law and certainly as a matter of the good sense of this committee to strike the vague and uncertain language now contained in subparagraph (4) that the President failed to act with respect to other matters.

The CHAIRMAN. The gentleman has consumed 1 minute and a half.

There will be 18½ minutes——

Mr. WIGGINS. Under the rule I take it I may yield at this point but I cannot reserve my time, is that correct?

The CHAIRMAN. You can yield at this time but there are still 18½ minutes remaining for those in support.

Mr. FLOWERS. Will the gentleman yield?

Mr. WIGGINS. Of course I will if it is in support of the amendment.

Mr. FLOWERS. I support your amendment.

I think this is——

Mr. WIGGINS. I will be happy to yield.

Mr. FLOWERS. This is material that perhaps, I hope, escaped the drafter of it and can be stricken from it. That is about all I have to say. I support your amendment.

Mr. WIGGINS. I appreciate the gentleman's support. I am prepared to yield to my friend from Indiana.

Mr. DENNIS. Really, this matter does not need much debate, I don't believe, because it is so obvious and plain that under any theory of the law, modern, ancient, or whatever you want to call it, you are entitled to know a little something about what you are charged with and as a matter of fact, there is a certain amount of specificity in this article as it is drawn and we have been given some justifications for article II up here which are fairly specific and just to run in here that he has failed to take care that laws were faithfully executed, by failing to act when he had reason to know his subordinates were going to do certain specific things with regard to the Democratic Headquarters and then throw in a catch-all, "concerning other matters," without any definition at all, seems obviously unfair.

I agree with my friend from Iowa down here to the extent that I feel that this article, too, if the proof were here, and I do not think it is, as I am going to discuss further, later when we get to debating the article proper, but if the proof were here, I think in many ways this could be a more serious impeachable offense than that we had presented under the article the other day, because if there were actually a concerned



intentional abuse of the powers and duties of the Presidency for political reasons or other improper reasons, I think you might have something worthy of consideration. But if you are going to get into that, particularly if you are going to include things as we are trying to include here, which are not even violations of the statutes, you at least owe it to everybody to set out what you are talking about.

This is just so vague and general it could go back as far as you can go and cover anything that anybody might dream up at some time. It is so difficult to argue because it is so simple and right. So I support the amendment.

Mr. WIGGINS. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman?

Mr. RAILSBACK. Mr. Chairman, I thank the gentleman for yielding. I rise also in support of this amendment and honestly, I would hope that the proponents of the amendment would accept this or the proponents of the article would accept this amendment.

Mr. McCLORY. Mr. Chairman?

Mr. DENNIS. Mr. Chairman?

The CHAIRMAN. The gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, I would like to speak in opposition to the amendment for this reason: It strikes me that the break-in of the Democratic Headquarters is only part and in my opinion only a small part of the misdeeds, the misconduct which is attributable to these aides and assistants of the President, and where the President through these individuals attempted to impede the investigations of the Department of Justice and to otherwise interfere or frustrate the lawful inquiries.

For one thing, certainly the break-in of Dr. Fielding's office and the events surrounding that are far more reprehensible in my opinion. The Watergate—the break-in at the DNC is a political matter but the other is unrelated to any political campaign and there are a number of other activities that I suppose they could be all delineated but I think they are all well known.

Now, it is possible that some other appropriate language which would cover this would be adequate instead of just the blanket phrase "other matters."

A great deal of this does arise from the break-in of the Democratic Headquarters. In other words, while that seemed to generate this sort of clandestine operation which took place in the White House, nevertheless, it was only a small part of the overall activities in which all of these different characters were involved and I would hope either that we would retain this language or that some appropriate more explicit language would be offered in order to cure what the gentleman feels is too much of a generalization.

Mr. HOGAN. Mr. Chairman?

Mr. McCLORY. I yield to the gentleman from Maryland, Mr. Hogan.

Mr. HOGAN. I would like to associate myself with the remarks of the gentleman from Illinois, Mr. McClory. While I think it would be preferable in the drafting of this clause if we did include more specific terms, there are many more items than the break-in of the Democratic National Committee. But, I think this argument of specificity that my friends and colleagues have so effectively and articulately made is, in effect, a red herring because we should not delude ourselves into think-

ing the deliberations we are now engaged in is a presentation of the evidence. We do not intend to duplicate the 10 weeks of evidentiary hearings which brought us to this point. We are only trying in the most general way to give a summary of the kinds of arguments which support the various paragraphs in the article. We are not presenting the evidence.

I will vote against the amendment of the gentleman from California, but I do hope that some of our draftsmen who are supporting article II will jot some additional specifics and offer some additional amendments so we can clarify the objection raised by the gentleman from California.

Mr. McCLORY. I yield to the gentleman from Maine.

Mr. COHEN. I thank the gentleman for yielding.

I would like to follow up on the line of reasoning of Mr. Hogan and inquire of the gentleman who drafted this article as to whether or not he was prepared, as we have been prepared in the past, to list a number of specific instances to which you are referring, in addition to the break-in into Dr. Fielding's office. I think that of particular concern might be the matter that Mr. Hogan mentioned just prior to the break, and that was the activities involving the transfer of FBI records to the Oval Office at the direction of the President. Could the gentleman from Missouri help us out in that regard as to whether or not he would be in a position to delineate some of the specific items upon which he intends to rely upon for the proof of this case?

Mr. McCLORY. I yield to the gentleman from Missouri if he wants to respond.

Mr. HUNGATE. I thank the gentleman for yielding.

The language of 4, if you refer to the first few lines of that, when you talk of concerning other matters he has failed to take care that the laws were faithfully executed by failing to act when he knew or had reason to know his close subordinates, et cetera. Now, we are talking of situations of which he should know or should have reason to know, and as we have said earlier, the doctrine of impeachment cannot really be very narrowly confined. It is as broad as the king's imagination. It has to be. If I can define it closely enough, there will be somebody to figure a way around it.

Take the Kleindienst situation. The testimony, the evidence before the committee, as I recall it and would state it is that Mr. Kleindienst received what we would I guess call a chewing out from the President, in rather plain and forceful, clear language, and concerning a specific matter. And then when he was before the Senate committee, they were asked if anybody had approached him concerning the matter of ITT, as I recall, and he in effect said well, he might have casually mentioned it. Well, I am telling you that the chewing out that he got was such that you would remember it no matter who gave it to you, and certainly if it came from the President he would remember it.

Now, we still find him, the President after this date, going before the American people and saying when he knew that this testimony had been given, and when he had reason or knew, or had reason to know that the testimony was not true, and upholding the testimony of Mr. Kleindienst in that situation.

Now, there are other examples. I am told in the Jaworski consideration in the false Diem cables, these are the sort of things that would be covered here.

I yield back the time.

Mr. DENNIS. Would the gentleman from Illinois yield?

The CHAIRMAN. How much time has expired?

Mr. McCLORY. I yield to the gentleman from California.

Mr. DENNIS. I thought you had some time. That's all.

The CHAIRMAN. Would the gentleman please defer.

There are 7 minutes that have been consumed in opposition and 4 minutes in support.

Mr. WALDIE. Mr. Chairman?

The CHAIRMAN. Mr. Waldie.

Mr. WALDIE. Mr. Chairman, I rise in support of the amendment, and the reason I do is because we were specific in our allegation in the first portion of that paragraph, where we limited the failure to faithfully execute the laws into the unlawful entry into the headquarters of the Democratic National Committee. Now, I happen to believe that the matter of Mr. Kleindienst and the antitrust case might well fall within the provisions of the general allegation of paragraph (4), but we alleged specifically the break-in of the Democratic National Committee, and we throw in just absolutely as an afterthought those last four words, "and concerning other matters." And I am not at all—I do not at all concur in what I have thought to be the objective of my friend from California, Mr. Wiggins, to limit and narrow this inquiry so precisely that the proof that could be produced would be almost prohibitive in our ability to produce it. But, in this instance I think we have strayed so far into generalities that we would be well advised to adopt his amendment and we would in so doing, in my judgment, do no violence to our standards of fairness, and do no violence to our obligation to have an opportunity to consider and introduce all proof necessary that bears upon impeachable offenses of the President. So I support the gentleman from California.

Mr. SARBANES. Would the gentleman yield?

Mr. WALDIE. I will be happy to yield.

Mr. SARBANES. I think there is some truth to what the gentleman says, but I do think that we ought to consider the point that has been made that in this take care paragraph there are other unlawful activities which occurred to which the responsibility of the President ought to run, and which ought to be provided as part of the proof with respect to this paragraph. So, it seems to me, there is a choice available between simply eliminating the clause and having nothing, and developing language that provides a more definite standard than the language that is contained at the end of this paragraph.

And I would suggest to the gentleman that if we could develop such language, it would enable us to maintain the substance of what we are talking about here, which the gentleman from Illinois referred to somewhat earlier, and yet meet the basic thrust of the objection of the gentleman from California.

Mr. THORNTON. Would the gentleman yield?

Mr. WALDIE. I yield to the gentleman from Arkansas, Mr. Thornton.

Mr. THORNTON. I thank the gentleman for yielding.

I would like to suggest that we give some attention to the result of this amendment, if adopted, in too narrowly defining the inquiry of this article, particularly in that it would, in my view, exclude the coverup of the unlawful entry into the Democratic National Committee, or at least the second stage of that coverup, when what was then being considered was the failure of the President himself to advise the Department of Justice of the involvement which he knew of his own men in the coverup which had occurred.

The language as it would read, if this amendment were adopted, would limit that failure to take care only to those acts surrounding the unlawful entry into the headquarters of the Democratic National Committee. If you were to add "and the coverup thereof," it might improve this amendment.

However, that is not included in the effect of the amendment as adopted which in my view limits the thrust of this paragraph (4) to the break-in itself and nothing further.

Mr. WALDIE. Well——

Mr. RAILSBACK. Would the gentleman yield?

Mr. WALDIE. I respond, and I am still on my time, Mr. Chairman, and I only want to respond to Mr. Thornton's point which I think is well taken. If the language is limited only to a consideration of the events leading up to the unlawful entry, and not the attempt to frustrate the inquiry into the events subsequent to the unlawful entry, the coverup, I think then that the point is awfully well taken. It was not ever my understanding that the initial words were limited only to the unlawful entry, and that we included the coverup in the words "and concerning other matters." If we had to include the coverup by putting in the phrase "and concerning other matters," it is incredibly poorly drafted. My only impression is, and I would have to refer to the author, that the original words involving the break-in of the Democratic National Committee headquarters included both the entry as well as the coverup, and concerning other matters has nothing to do with the Democratic National Committee burglary entry or coverup.

Mr. DRINAN. Mr. Chairman?

Mr. RAILSBACK. Would the gentleman yield?

The CHAIRMAN. The gentleman's 5 minutes have been consumed.

Mr. DRINAN. Mr. Chairman?

Mr. McCLORY. Mr. Chairman, I have a perfecting amendment at the desk.

The CHAIRMAN. The gentleman is recognized. The clerk will read the perfecting amendment.

The CLERK [reading]:

Amendment by Mr. McClory.

In the Hungate substitute strike from subparagraph (4) the word "matters" and insert in lieu thereof the following: "unlawful activities."

Mr. McCLORY. Mr. Chairman?

Mr. DENNIS. Mr. Chairman, parliamentary inquiry. How do we get——

The CHAIRMAN. The gentleman will state it.

Mr. DENNIS. How do we get to such an amendment in order at this time? There is an amendment of the gentleman from California pending, and I would submit respectfully that either that amendment must

be offered to the amendment, or an amendment must be offered in the nature of a substitute to the amendment, and I do not believe that a so-called perfecting amendment, which ignores the pending amendment which goes back to the original text is in order.

The CHAIRMAN. Both perfecting amendments can be pending at the same time. This is a perfecting amendment, and therefore, would take precedent over any other amendments, and the vote would occur first on the McClory perfecting amendment.

Mr. DENNIS. But if the Chair please—

Mr. McCLORY. Mr. Chairman?

Mr. DENNIS. If the Chair would hear me further, I suppose the Chair must know the parliamentary law better than I do, but while I have heard of perfecting amendments, this is the first time I have ever seen a pending amendment taken off the floor in this manner. I think you have to address something to the pending amendment, either a substitute or something to perfect it or change it.

Mr. SEIBERLING. Would the gentleman yield?

Mr. DENNIS. Well, I have made my point.

The CHAIRMAN. The gentleman has stated a parliamentary inquiry, and the Chair has stated that the perfecting amendments, can both occur. The perfecting amendment of the gentleman from Illinois is only offered as such and therefore, the Chair will state that what will occur now will be that the gentleman from Illinois will be recognized for his perfecting amendment, and the question would take place on that.

Mr. McCLORY. Mr. Chairman, all that this perfecting amendment does is to delete the word "matters" and substitute the words "unlawful activities." What we are talking about here really are unlawful activities of those who were employed in the White House, and who operated during this period prior to and subsequent to the Democratic National Headquarters break-in, and who were involved in all of these other unlawful activities to which we have made reference—the burglary of Dr. Fielding's office, the perjury with respect to Mr. Kleindienst's confirmation and a number of other matters that which we are aware of. It would certainly be inadequate on our part to recommend to the House of Representatives that they consider only the breaking in of the Democratic National Headquarters when so many other more serious matters which we have investigated are involved.

I would like to call attention to the fact that this article II is in the nature of a civil charge, a civil charge or complaint, and it is something of which the respondent, of course, is well aware. This is stated with definiteness. There is no doubt or uncertainty as to what we are talking about. There should not be any question as to the President being apprised of what is involved in this paragraph. And if we merely include the words "unlawful activities" it will include these other matters. We do not have to delineate a long string or a long line of matters which are involved in the criminal conduct of some 20 different people who were so engaged. What we are talking about is a pattern of misconduct, and we include, of course, the initial break-in of the Democratic National Committee headquarters, plus these other things that are also involved, and on which we will be sending our articles on to the—

Mr. DENNIS. Will the gentleman yield?

Mr. McCLORY [continuing]. To the House for their consideration and their judgment.

Mr. DENNIS. Will the gentleman yield?

Mr. McCLORY. I yield for a question. If the gentleman wants to make a question I think he can take it.

Mr. DENNIS. I am asking for a question.

Mr. McCLORY. Sure. I am happy to yield to the gentleman.

Mr. DENNIS. I was just wondering whether the gentleman from Illinois felt that to make it read "concerning other unlawful activities" instead of "concerning other matters" really advanced us very far as far as specificity is concerned which I had understood the gentleman was concerned with a moment ago.

Mr. McCLORY. Yes.

I will say it does because we are not talking about other matters, other kinds of conduct that are not unlawful or anything that isn't in the nature of a criminal act or some serious wrongdoing, and so if we say it is unlawful activity which we are concerned with I think it apprises the President of what is involved.

Mr. HUNGATE. Will the gentleman yield to me, please?

The CHAIRMAN. Will you yield to the gentleman from Missouri?

Mr. McCLORY. Yes. I am happy to yield to the gentleman from Missouri.

Mr. HUNGATE. I am happy to indicate on my part I am pleased to accept the perfecting amendment of the gentleman from Illinois.

Mr. McCLORY. I thank the gentleman.

Mr. BROOKS. Question.

The CHAIRMAN. The question is on the—the question occurs on the perfecting amendment by Mr. McClory.

Mr. WIGGINS. Parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. WIGGINS. What happened to my amendment?

The CHAIRMAN. The gentleman's amendment—

Mr. WIGGINS. Do we expect to vote on it shortly?

The CHAIRMAN. The gentleman's amendment will be voted on after the McClory question has been put to the committee.

The question is on the amendment of the—

Mr. COHEN. Mr. Chairman—

The CHAIRMAN [continuing]. Of the gentleman from Illinois. All those—

Mr. BUTLER. Mr. Chairman, parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. BUTLER. We are of the view that there were further refinements which might be made in the perfecting amendment of Mr. McClory by specifically spelling out some of the areas of inquiry. Would I be foreclosed after this vote from introducing such a perfecting amendment of the perfecting amendment of Mr. McClory?

The CHAIRMAN. No. The gentleman would not be foreclosed.

Mr. BUTLER. I thank the Chairman.

The CHAIRMAN. The question occurs on the amendment offered by the gentleman from Illinois, Mr. McClory, as a perfecting amendment. All those in favor please say aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The ayes appear to have it. The ayes have it.

Mr. Butler.

Mr. BUTLER. Mr. Butler is in the throes of drafting a perfecting amendment with Mr.——

The CHAIRMAN. If there is no amendment before the desk——

Mr. BUTLER. Mr. Chairman?

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. The gentleman's amendment, Mr. Wiggin's amendment, is——

Mr. RAILSBACK. Mr. Chairman—excuse me, Mr. Chairman.

The CHAIRMAN. Just a——

Mr. RAILSBACK. Could I make a parliamentary inquiry?

The CHAIRMAN. The gentleman will state it.

Mr. RAILSBACK. If Mr. Butler is in the throes of drafting, and I hope he is drafting it quickly——

Mr. HOGAN. He is.

Mr. RAILSBACK [continuing]. Then, will he have an opportunity at that point before we vote on the gentleman from California's main amendment to offer his amendment?

Mr. WIGGINS. You wouldn't be stalling?

Mr. RAILSBACK. No. I am just wondering.

The CHAIRMAN. The Chair wishes to state that the parliamentary situation is that the gentleman's amendment from Illinois having been adopted as a perfecting amendment the only amendment that now is before the committee is the amendment which was offered by the gentleman from California.

Mr. RAILSBACK. Well, then, Mr. Chairman, I wonder if we could have like a 5-minute recess.

Mr. SEIBERLING. Mr. Chairman, I have a perfecting amendment at the desk.

Mr. HOGAN. Parliamentary inquiry, Mr. Chairman.

Mr. SEIBERLING. If the clerk can——

Mr. HOGAN. Parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. Mr. Hogan.

Mr. HOGAN. My parliamentary inquiry, Mr. Chairman, is this. If Mr. Butler's amendment is to be in order and be considered, isn't it true that the rules require that this amendment be in writing at the desk?

The CHAIRMAN. The gentleman is correct.

Mr. HOGAN. So then I would assume that Mr. Butler would have to write it and have it duplicated and presented at the desk before it can be considered by the committee.

Mr. SEIBERLING. Mr. Chairman, I have a perfecting amendment at the desk.

The CHAIRMAN. The gentleman is recognized.

Mr. SEIBERLING. Mr. Chairman?

The CHAIRMAN. The clerk will read the amendment.

The CLERK [reading]:

Amendment by Mr. Seiberling.

Add at the end of subparagraph 4 "by employees of the executive branch or the Committee to Re-elect the President".

Mr. WIGGINS. Read that again, please?

Mr. SEIBERLING. Mr. Chairman, if I may be recognized to speak on my amendment—

Mr. DENNIS. Mr. Chairman, I would like a copy.

Mr. McCLORY. May we have the amendment read again, please?

The CHAIRMAN. The committee will be in order until the clerk reads the amendment.

The CLERK [reading]:

Amendment by Mr. Seiberling.

Add at the end of subparagraph (4), "by employees of the executive branch or the Committee to Re-elect the President."

Mr. WIGGINS. Did the Chair hear my reservation of the point of order?

Mr. SEIBERLING. Is the gentleman reserving his point of order?

Mr. WIGGINS. Yes, I am reserving it.

Mr. SEIBERLING. Mr. Chairman, may I be heard on my amendment?

The CHAIRMAN. The gentleman is recognized.

Mr. SEIBERLING. It seems to me that the objections to the amendment raised by Mr. Wiggins are not entirely cured by the perfecting amendment of Mr. McClory because crimes and unlawful activities go on all over the United States every day and at least we ought to tie it down to those that we are really concerned about, and my perfecting amendment makes it clear that we are talking about other unlawful activities by employees of the executive branch or the Committee to Re-elect the President, which it seems to me cover enough of the activities that are before us here to get in all of the evidence that we have been considering. And that is why I offer the amendment.

Mr. DENNIS. Would the gentleman yield?

Mr. SEIBERLING. Yes, I will yield.

Mr. DENNIS. Since you offer "all unlawful activity of all employees of the executive branch," I assume under your amendment if a clerk steals \$100 in the post office in Indianapolis or someplace like that, that that is included.

Mr. SEIBERLING. Well, we have a record before us, Mr. Dennis, that is pretty clear, what employees we are talking about, and it seems to me that that is sufficient.

Mr. SARBANES. Would the gentleman yield?

The CHAIRMAN. Yes.

Mr. SARBANES. I would like to suggest that the language concerning "other unlawful activities" does not need any further limitation since it refers back to the language at the beginning of subparagraph (4) which refers to failing to act when he knew or had reason to know that his close subordinates endeavored to impede and frustrate lawful inquiries by duly constituted executive, judicial and legislative entities, concerning—and then you have two concerning clauses, one, the unlawful entry, and the other one would be concerning other unlawful activity but that would relate back to the activities of the close subordinates and would be consistent with the theory of this paragraph as I understand it as advanced by the gentleman from Illinois.

Mr. McCLORY. If the gentleman from Ohio will yield, I would say that that is correct. And I think that the language would be confusing if we accepted the additional language offered by the gentleman from Ohio.



Mr. SEIBERLING. Well, if that is the interpretation in the record, I think that does clarify matters, but the mere words standing alone, "other unlawful activities" I do not think are sufficiently clear.

Well—

Mr. McCLODY. If the gentleman would yield further, the "other unlawful activities" refers to the close subordinates and I think those are the only ones we want to direct our attention to.

Mr. SEIBERLING. All right.

Well, I will ask unanimous consent to withdraw my perfecting amendment.

Mr. McCLODY. Without objection.

The CHAIRMAN. Without objection, the amendment is withdrawn.

Mr. WIGGINS. Would the gentleman—

The CHAIRMAN. The question is still on the amendment of the gentleman from California. All those in favor of the amendment please signify by saying aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed.

[Chorus of "noes."]

The CHAIRMAN. The noes appear to have it.

Mr. SANDMAN. Mr. Chairman, the yeas and nays.

The CHAIRMAN. Call of the yeas and nays is demanded and the clerk will call the roll.

All those in favor of it signify please by saying aye. All those opposed, no.

The clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. Aye.

The CLERK. Mr. Flowers.

Mr. FLOWERS. Aye.

The CLERK. Mr. Mann.

Mr. MANN. No.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. No.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. No.

The CLERK. Mr. Danielson.

Mr. DANIELSON. No.

The CLERK. Mr. Drinan.

Mr. DRINAN. No.  
 The CLERK. Mr. Rangel.  
 Mr. RANGEL. No.  
 The CLERK. Ms. Jordan.  
 Ms. JORDAN. No.  
 The CLERK. Mr. Thornton.  
 Mr. THORNTON. No.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. No.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. No.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. No.  
 The CLERK. Mr. Hutchinson.  
 Mr. HUTCHINSON. Aye.  
 The CLERK. Mr. McClory.  
 Mr. McCLORY. No.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. Aye.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. Aye.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. Aye.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. Aye.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. Aye.  
 The CLERK. Mr. Fish.  
 Mr. FISH. No.  
 The CLERK. Mr. Mayne.  
 Mr. MAYNE. Aye.  
 The CLERK. Mr. Hogan.  
 Mr. HOGAN. No.  
 The CLERK. Mr. Butler.  
 Mr. BUTLER. No.  
 The CLERK. Mr. Cohen.  
 Mr. COHEN. No.  
 The CLERK. Mr. Lott.  
 Mr. LOTT. Aye.  
 The CLERK. Mr. Froehlich.  
 Mr. FROEHLICH. Aye.  
 The CLERK. Mr. Moorhead.  
 Mr. MOORHEAD. Aye.  
 The CLERK. Mr. Maraziti.  
 Mr. MARAZITI. Aye.  
 The CLERK. Mr. Latta.  
 Mr. LATTA. Aye.  
 The CLERK. Mr. Rodino.  
 The CHAIRMAN. No.  
 The CLERK. Mr. Chairman?  
 The CHAIRMAN. The clerk will report.  
 The CLERK. Fourteen members have voted aye, 24 have voted no.  
 The CHAIRMAN. And the amendment is not agreed to.

Mr. BUTLER. Mr. Chairman?

The CHAIRMAN. Mr. Butler.

Mr. BUTLER. In order that the membership may understand, I am in the process of preparing an additional amendment which I would rather—rather than draft it in haste, I will prepare it and submit it at a later time when we get to this paragraph if that is in order.

The CHAIRMAN. The amendments are in order at any time. However, in order to give the gentleman the opportunity to draft his amendment the Chair will proceed with the recognition of members under the 5 minutes which they are entitled to under the substitute amendment.

Mr. BUTLER. I thank the chairman.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. I just have a question of the chairman. There are pending at the desk several motions to strike.

The CHAIRMAN. That is correct.

Mr. WIGGINS. And I—by reason of not calling them up at this time in advance of what we call a general debate with respect to the entire article, I hope that there is no waiver of that right. It would be my hope that we would continue to discuss it under the 5-minute rule and at the conclusion of that, that a member might be recognized for an appropriate motion to strike if that be his intention.

The CHAIRMAN. Well, the gentleman may at any time be recognized for that motion to strike.

The amendments are at the desk now and the motion to strike, if it is the gentleman's desire to be heard on the motion to strike at this time, the gentleman will be recognized in preference to recognition of the members on the question of debate on the substitute.

Mr. WIGGINS. Well, it is going to be done sooner or later, Mr. Chairman. I call up No. 2.

The CHAIRMAN. The gentleman is recognized.

The clerk will read the amendment.

The CLERK [reading] :

Amendment by Mr. Wiggins.

In the Hungate substitute, strike subparagraph (2).

The CHAIRMAN. Mr. Wiggins?

Mr. WIGGINS. I thank the chairman for yielding.

Members of the committee, as we all know—as we all know, subparagraph 2 is directed primarily to the area of electronic surveillance for alleged national security purposes. Since that subject has not been debated before this committee, my motion to strike is to focus our attention on that subject.

I would hope to yield to other members on the other side who have thoughts with respect to that.

Mr. Chairman, are we operating under the unanimous consent provision?

The CHAIRMAN. That is correct; 20 minutes for those in support of the amendment, 20 minutes in opposition.

Mr. WIGGINS. All right, I should like to set the focus for this debate concerning electronic surveillance by recalling that these individual wiretaps commenced early in 1969 and continued for approximately 1 year thereafter.

We have before us a series of specific wiretaps which form the basis of this allegation of abuse of power by the President. They can be categorized I think into the following four groups:

First, the 17 wiretaps which were authorized by the Attorney General and at least the allegation is made by the President that they were instituted in the interest of national security.

In addition to that, we have before us evidence with respect to three other wiretaps instituted by Mr. Ehrlichman concerning employees in the White House and, with respect to that, the evidence does not extend to any Presidential involvement or knowledge.

Then we have two isolated wiretaps which I will let the gentleman characterize, ladies and gentlemen, characterize as they wish.

We have Donald Nixon, and we have the wiretap of Joe Kraft.

Now, that covers the evidence with respect to wiretaps before us.

The clear bulk of that evidence involves 17 wiretaps which were commenced in the spring of 1969. I want to set the focus of the debate by making one assertion which I believe cannot be contradicted, and that is that the law with respect to wiretaps which are genuinely and honestly in the national interest is that the President does have that authority in 1969 and he has that authority today. It is improper to infer that it is illegal to install a wiretap which relates to national security matters.

The sole question is whether in fact the President had that motive or whether this was merely a subterfuge to install wiretaps for some other purpose. There being no question that even today, subsequent to the *Keith* case, that wiretaps installed by the President for national security purposes are authorized by Congress, at least have not been prohibited by Congress, and have not been prohibited by any decision of the U.S. Supreme Court.

That being the case, Mr. Chairman, we should focus our attention on the evidence with respect to the bona fides of the President in installing these 17 wiretaps. If they were in fact pursuant to his concern about national security interests, they were lawful and they cannot be condemned in these proceedings. But if in fact they were installed for other purposes, then I would concede that they would be probably unlawful and perhaps should be considered by this committee in an impeachment context.

Now, back in 1969, this Nation was involved in a war in Southeast Asia. This Nation was also involved in sensitive negotiations with the Soviet Union with respect to arms limitations. We have had evidentiary materials in abundance, in abundance, ladies and gentlemen, that there were leaks concerning the bargaining position of the United States vis-a-vis the Soviet Union which caused enormous concern by the President's top advisers and by the President himself; there being no question, no question at all, that Henry Kissinger was greatly concerned about these leaks, and as a result of those leaks a system of wiretaps on possible sources of that leak, those leaks, were instituted by the President.

I am willing to attribute those directly to the White House and directly to the President, those wiretaps were there—what does the chairman propose to do?

Have I used my 5 minutes?

The CHAIRMAN. The gentleman has consumed 5 minutes.

Mr. WIGGINS. Let me just finish my sentence, and then I shall yield to others.

Those wiretaps were in each case approved by Mr. Hoover, who was then FBI Director, and in each case was approved by the Attorney General.

I would hope the debate hereafter will focus on the debate with respect to the President's intentions with respect to the installation of those taps.

The CHAIRMAN. The gentleman from Wisconsin, Mr. Kastenmeier, is recognized for 4 minutes.

Mr. KASTENMEIER. Thank you, Mr. Chairman.

Actually, the debate on this section was really already begun this morning by the gentleman from Maryland, Mr. Hogan. I think this particular section of article II is central to the whole theme of abuse of power. As a free country, we have no higher course than to protect really our people against this sort of abuse of power which can come in a modern age in terms of a police state.

What we did as a Congress, in fact as a committee, in 1969 to limit the use of electronic surveillance and wiretapping is as follows:

In the Omnibus Crime Control Acts of 1968, which came out of this committee 6 years ago, we said that if any lawful authority is to conduct wiretapping or electronic surveillance, it must have a court order except, except, and I shall read, that the power of the President to take such measures as he deems necessary to protect the Nation against the following threats, mind you: (1) the actual or potential attack or other hostile acts of a foreign power; (2) to obtain foreign intelligence information deemed essential to the security of the United States; (3) to protect national security information against foreign intelligence activities; and lastly, to protect the United States against overthrow by force or other unlawful means or against any other clear or present danger to the structure or existence of the government.

Now there have been a number of classes of wiretaps, some of which have been alluded to by the gentleman from California, Mr. Wiggins, not necessarily in order of time. The one referred to by the gentleman from Maryland, back in 1970 by the Secret Service on Donald Nixon, which I agree, any reasonable man has to assume occurred with the knowledge and consent and by the direction of the President himself. And subsequent wiretaps and bugging, whether in the Watergate case or implicitly in the Huston plan, or those undertaken for the President by Mr. Ehrlichman in terms of Mr. Liddy, or Mr. Kraft abroad, or the 17 wiretaps point to a pattern of use of taps which do not conform to the law as posed by this Congress in 1968.

And I submit they are not otherwise authorized by any other decision of the court or by law.

Let us go back to the very beginning. How did we ever get there in the first place? How did the President happen to start engaging in wiretaps without any court order in such a mirage of activities? As you know, in any event, the procedure was that all taps would go through the Attorney General of the United States for his approval, whether or not these are warrantless wiretaps, and would be recorded, carried out by the FBI and fully recorded. And as the fact was, later

in the year 1971, sensitive about these taps, Mr. Mardian delivered this list of special White House taps to the White House itself, in fact to the Oval Office to be secreted in a safe by Mr. Haldeman.

In 1969, apparently following a New York Times article——

The CHAIRMAN. The gentleman has consumed 4 minutes.

Does the gentleman from California wish to yield?

Mr. WIGGINS. Yes, Mr. Chairman. I yield to the gentleman from California, Mr. Moorhead, for 5 minutes.

The CHAIRMAN. The gentleman is recognized for 5 minutes.

Mr. MOORHEAD. Yes, Mr. Chairman.

During the SALT negotiations a study was published in the New York Times on June 8, 1969, which spelled out our analysis of the Soviet Union's strategic strength and first-strike capability. Henry Kissinger said:

Each of these disclosures was of the most extreme gravity, as presentation of the Government's thinking on these issues has provided the Soviet Union with extensive insight as to our approach to the SALT negotiations and severely compromised our assessment of the Soviet Union's missile testing and our apparent inability to accurately assess their exact capabilities.

Another leak involved the alternatives for ending the Vietnam war. One alternative was a study of a unilateral troop withdrawal for Vietnam and Henry Kissinger said concerning this leak:

This disclosure was extremely damaging with respect to the Government's relationship and credibility with its allies. Although the initial troop withdrawal increment was small, its decision was extremely important in that it reflected a fundamental change in the U.S. policy. Certainly this gave to foreign agents information concerning the U.S. capability and plans which were harmful to our position.

If the President of the United States had not taken steps to determine where the leaks were coming from he would not have been carrying out his constitutional responsibility to take care of our Nation and its people. I submit to you that when such a leak takes place at a time when we are at war, when our troops could lose their lives, it is the responsibility of the President to find out where those leaks are coming from and stop them, and that is just exactly what he did.

The 17 wiretaps were instigated for the purpose of discovering the sources of these leaks. I know that in the testimony that has been given to our committee there was a question raised as to the effect of the wiretapping in solving the leaks. Mr. Colson, in his testimony before this committee answered that question. He told us that as a result of wiretaps we were definitely able to close one of the major leaks that had occurred, and, therefore, perhaps save the lives of many of our troops and help this country for the future.

I think this ground for impeachment is the weakest of all of those that have been brought up. Certainly there is no ground to impeach a President of the United States in his attempt to save the lives of our troops and the safety of our Nation.

Mr. EILBERG. Mr. Chairman?

Mr. MOORHEAD. I will yield back my time to Mr. Wiggins.

The CHAIRMAN. The gentleman from California.

Mr. WIGGINS. I want to just make a few observations about the legality of these taps.

This matter has been before Congress before. Congress has not litigated into the field. It is well to remember that former Attorney General Richardson, Elliot Richardson, testified before the Senate expressing his opinion that if, in fact, we are talking about national security wiretaps, it was wholly legal then and remains so today. That is also my recollection of the testimony of Attorney General Petersen before my friend from Wisconsin's subcommittee not to long ago when this subject was before it for consideration.

I yield the balance of Mr. Moorhead's time to the gentleman from Indiana.

The CHAIRMAN. The gentleman is recognized.

Mr. DENNIS. Mr. Chairman, just a word on this legal situation. None of us like wiretaps very well, but we are talking here about what was legal and what was proper as of the time that it was made and as of the time today.

Now, at the time of the wiretaps we are talking about I agree with Mr. Wiggins, the question is was national security involved. That is a factual question. But, if it was, there was nothing illegal about these wiretaps, and it is very doubtful that there is anything illegal today.

It has been held, for instance, in the third circuit that you could have a warrantless national security wiretap used to stem the flow of information out of the Government, and the contrary had never been held at the time we are now talking about.

And now, you have got to think of the climate, as has been said. We were having leaks about the Pentagon papers, about the SALT talks, about Vietnam. And Henry Kissinger said the leaks about troop withdrawals—

The CHAIRMAN. The 1 minute of the gentleman has expired.

Mr. DENNIS. Have I only got 1 minute?

The CHAIRMAN. The gentleman from California had 5 minutes and he had consumed 4 and had 1 minute remaining when he yielded to the gentleman from Indiana. The gentleman still has 10 minutes in support of the amendment.

Mr. WIGGINS. I will yield in a few moments to the gentleman from Indiana, but let it go to the other side.

Mr. EDWARDS. Mr. Chairman?

The CHAIRMAN. The gentleman from California.

Mr. EDWARDS. Thank you, Mr. Chairman.

I rise in opposition to the motion to strike. These 17 wiretaps started on May 12, 1969, as a result of the Beecher article in the New York Times revealing the secret bombing of Cambodia. And I want to correct the record right now. The SALT talks had nothing to do with it. There has never been an allegation that these 17 wiretaps were triggered by any SALT leaks, and there is nothing in our evidence to so indicate. Nor did the taps have anything to do with the Vietnam war, or with leaks about the Pentagon papers. That did not come until nearly 2 years later.

Mr. DENNIS. Now wait a minute.

Mr. EDWARDS. On your time, my friend, you can straighten it out.

Mr. WIGGINS. We shall.

Mr. EDWARDS. But that is the fact.

I think it is really more important to point out what was done with the information that resulted from these taps.

Mr. Hoover, the Director of the FBI, would send them to the White House, to the President. There was a total from 1969 to 1971—and they went on for more than 2 years—of 104 summaries sent. And what happened? It was found that there had been no leaks of confidential information from these 104 summaries. Nobody went to jail, nobody was charged, nobody lost their job, nobody was transferred.

There were six or seven members of the National Security Council who had their telephones tapped. Four newsmen later were tapped, and several White House employees. Most of these people had no access to any confidential information whatsoever. And as I pointed out earlier, these summaries indicated that no leaks were going on.

Well, how was this information used by the White House? On December 29, 1969, Mr. Hoover wrote to the President and said that former Secretary of Defense, Clark Clifford, was about to write an article in Life magazine attacking Mr. Nixon on his handling of the Vietnam war, and part of Mr. Clifford's attack was to be regarding Mr. Nixon's criticism of President Thieu.

Well, immediately this triggered political action by the White House. Presidential assistant Butterfield wrote Magruder: "The name of the game, of course, is to springboard ourselves into position from which we can effectively counter whatever Clifford takes." The suggested method of countering Clifford's article was sent by Haldeman, the chief political adviser to President Nixon, and included a proposed discrediting of Clifford by use of his prior statements or a counter-article.

Haldeman directed Magruder to be ready to act and suggested finding methods of free action. Mr. Haldeman concluded "the key now is how to lay groundwork and be ready to go, and let's act."

Mr. Ehrlichman characterized the Clifford information as "the kind of early warning we need more of," and he noted to Mr. Haldeman, "your game planners are now in excellent position to map anticipatory action."

The basic nature of the material developed from these 17 wiretaps and sent to the White House was political and personal. There were no leaks. The FBI was presumably sending what the White House wanted, and certainly the flow of the information was not stopped by the White House when the character of the material became obvious.

The material, in addition to the political information on Clark Clifford, contained reports on how certain Senators were expected to vote on legislation, on the activities of critics of the administration's policies, on the campaign plans of Senator Muskie.

The CHAIRMAN. The time of the gentleman has expired.

Mr. EDWARDS. Could I have 3 more minutes, please, Mr. Charman, of the 20 minutes?

The CHAIRMAN. The gentleman has consumed 4 minutes.

Mr. EDWARDS. Four minutes, and I will take 2.

The CHAIRMAN. The gentleman is recognized for 2 more minutes.

Mr. EDWARDS. And information on the social habits and political plans of White House employees. The material had no conceivable relevance to national security, but only could have had political value.

I personally reviewed many of these summaries that the FBI sent



to the President describing what was said over the home telephones of these people under surveillance, and I want to be careful not to describe any of the information in such a way that it could get back or be traced to the people involved. Suffice it to say the conversations were those of citizens, their wives, their children, chatting on the telephone with acquaintances and close friends, confiding their joys, their sorrows, their anxieties about their personal lives, and in some instances, their observations about political and social events of the United States. These telephone calls were like any calls between close friends where personal disclosures were made only for the ears at the other end of the line, and some of the information would be terribly embarrassing if it were heard by third parties.

The summaries themselves are the strongest evidence of the wisdom of Mr. Justice Holmes' description of wiretapping as "a dirty business." The President authorized these wiretaps. He did not stop it when they almost immediately proved to be nonproductive. He knew about them. He discussed them with John Dean on February 28, 1973. He was talking about two of the men who were being tapped, and he said to John Dean, "Incidentally, didn't Muskie do anything bad on these?"

To share with you how the FBI felt about it, this is what two agents said in a memorandum on October 20, 1971. They were talking about why there were no regular records kept of these tapes by the FBI. This is what the two FBI agents said:

It goes without saying that knowledge of this coverage represents a potential source of tremendous embarrassment to the Bureau and political disaster for the Nixon administration. Copies of the material itself could be used for political blackmail and ruination of Nixon, Mitchell, and others.

The CHAIRMAN. The gentleman has consumed 2 more minutes; 10 minutes now are remaining for those in support of the amendment, and 10 minutes remaining in opposition to the amendment.

The gentleman from California.

Mr. WIGGINS. I yield 5 minutes to the gentleman from New Jersey.

The CHAIRMAN. The gentleman from New Jersey, Mr. Maraziti, is recognized for 5 minutes.

Mr. MARAZITI. Thank you.

I support the motion of the gentleman from California, Mr. Wiggins. There was clear legal authority for the warrantless national security wiretaps at the time that the 17 taps were conducted.

Now, former Attorney General Richardson, referring to case law, has stated that the Department of Justice is justified in relying on lower court decisions permitting national security wiretaps. And let me say that I certainly agree with what has been said here today, that we must look at the circumstances to justify wiretaps on the basis of national security.

But, I believe that the circumstances surrounding these wiretaps demonstrate clearly that they involved national security.

Now, as has been discussed, we know that the Government at that time, or we must look back, we cannot look as of today, the Government was faced with massive leaks of sensitive foreign policy information. When the President was just beginning to establish policies of future relationships with other nations, these leaks began in the spring of 1969, when President Nixon was exploring the solutions to

the Vietnam war. These leaks were damaging to the diplomatic efforts being made to end the war at that time. And I disagree with the gentleman from California, Mr. Edwards, that these wiretaps had nothing to do with the Vietnam war.

Let us listen to Henry Kissinger and see what Henry Kissinger thought. And here is what Mr. Kissinger thought. "Each of the above disclosures were extremely damaging with respect to this Government's relationship and credibility with its allies. With the South Vietnam Government to hear publicly of our apparent willingness to consider unilateral withdrawals, without first discussing such an approach with them, raised a serious question as to our reliability and credibility as an ally." And they had a great deal to do with the Vietnam war, quoting Mr. Kissinger. And I think he is an authority in this area.

Some of the most damaging leaks occurred with regard to the SALT negotiations. And despite what the gentleman from California states, the SALT negotiations were involved.

On January 20, 1969, when the President first took office, he immediately directed that an overall study be undertaken regarding the U.S. strategic force posture for the internal use of the Government and for the use in the SALT negotiations. Now, notwithstanding the need for secrecy of the study, and it is obvious, the May 2, 1969, edition of a large newspaper reported five strategic options under study. These options were published in the press, in advance, before they were considered by the National Security Council of the U.S. Government. The damaging nature of these disclosures was summed up by Henry Kissinger again. He said, "Each of these disclosures was of the most extreme gravity, as presentations of the Government's thinking on these key issues provided the Soviet Union with extensive insight as to our approach to the SALT negotiations." I say again, they had reference, these wiretaps had reference to the SALT negotiations.

Mr. EILBERG. Mr. Chairman?

Mr. MARAZITI. Now, let me say that the results of the wiretaps in several instances were fruitful. Now, we must realize that when wiretaps are placed, they certainly will pick up certain personal items that were not needed, but in this particular case the results were successful in a number of instances.

The FBI reported that several of the National Security Council staff members had extensive contacts with members of the press. In particular, two employees, X and L, discussed many aspects of the internal workings of the National Security Council with a newsman.

The CHAIRMAN. The gentleman has consumed 5 minutes.

Mr. EILBERG. Mr. Chairman?

Mr. MARAZITI. I ask for 1 more moment to finish.

The CHAIRMAN. The gentleman's time is expired, the 5 minutes.

Mr. WIGGINS. Well, I cannot yield at the moment, but I will see you get more time.

Mr. MARAZITI. Thank you very much.

The CHAIRMAN. The gentleman from Pennsylvania is recognized for 3 minutes.

Mr. EILBERG. Mr. Chairman, I oppose the motion to strike. We are told that national security is involved, but I would like to suggest that the mere assertion of national security is not enough.

The gentleman from Wisconsin has given the criteria, and I think the members can read for themselves and see that the criteria have not been met. More importantly, they have seen the excerpts for themselves, and I am sure that the memory of these excerpts is present in the minds of all of the members. Certainly I recall them very vividly, and perhaps have reason to.

Let me say, Mr. Chairman, that Mr. Nixon himself on February 28, 1973, stated that the taps were a joke, that these taps were a joke, and that they never had proved anything. It seems to me, Mr. Chairman, that this was an adventure into the private rights of individual citizens, and I would like to discuss for a moment just what the use of wiretaps and secret listening devices means in a free society.

I am sure we all remember the stories on television and the movies and books about spying, which has gone into Nazi Germany and into the Soviet Union, and we have learned how in Russia you must never have a serious conversation without turning on the water or the radio so that your conversation cannot be heard by the secret listening devices. And it is also an axiom that the telephone is tapped in Russia so that everyone takes long walks in the park so that they can communicate. This has become an article of faith that in Russia Big Brother has arrived, that the secret police are always listening.

Now we learn that in the late 1960's and early 1970's and possibly right up to this date, the secret police have been listening in on Americans, only now they have special equipment to eliminate the noise of the running water or the loud radio. In Washington it has become a sardonic joke to say that the phone is tapped whenever there is a strong noise on the line. We have become a suspicious people afraid to talk freely, not because what we say might prove we have committed a crime or endangered the national security, but because our political enemies might use this information against us.

Mr. Chairman, the Nixon White House made the secret police a reality in the United States. The President and his men knew that what they were doing was so morally repugnant that they could not even trust the FBI to keep records of their activities.

Finally, they could not even trust their own subordinates, so the files were taken to the Oval Office of the White House and then locked in the safe of the second most trusted advisor.

Mr. Chairman, in addition to everything else, it seems to me that various crimes have been committed, and that what we are discussing now, it seems to me, is not one of the least important but one of the most important of the impeachable offenses. And when it comes time for debate on paragraph 2, I intend to point out some of the criminal violations that are involved, and I thank you.

The CHAIRMAN. The gentleman has consumed 3 minutes.

The gentleman from California.

Mr. WIGGINS. I yield 1 minute only to the gentleman from New Jersey.

Mr. MARAZITI. I thank you for yielding.

The CHAIRMAN. The gentleman is recognized.

Mr. MARAZITI. In conclusion, Mr. Chairman, the records of the FBI show that the information that was obtained by these wiretaps was put to good use to prevent further leaks. And certainly I concur with

what has been said here today, that the President committed no illegal act in instituting these wiretaps. And indeed, he would have failed in his constitutional responsibility if he did not attempt to prevent further disclosure of national security information. And I for one, Mr. Chairman, would say that the fact that the President did not, in fact, try to stop these leaks in the interest of national security, I would vote to impeach him for his failure to do so.

The CHAIRMAN. The gentlelady from Texas is recognized for 3 minutes.

Ms. JORDAN. Thank you, Mr. Chairman.

Mr. Chairman, there is no question about the right of the President to institute warrantless wiretaps, even in the interest of national security. We do not quarrel about that.

Date back 1940, President Roosevelt in a memo to his Attorney General, Attorney General Jackson stating that it is in the interest of national security to prevent subversive activities, to instigate these warrantless wiretaps, but that is not what we are concerned about. We concede the right to issue, instigate, authorize wiretaps in the interest of national security.

The question is whether President Nixon used his authority in conformity with and comporting with what the law is and what the law was at the time those wiretaps were instituted? The fact was uncontroverted that Mr. Nixon authorized the wiretaps. The threshold question is whether or not the law and the Constitution were complied with.

We have the 1967 *Katz* decision which said that wiretaps do come under the fourth amendment against unreasonable searches and seizures. We have a 1969 Omnibus Crime Control and Safe Streets Act.

Now, what I want to hear the opposition address themselves to is whether the Omnibus Crime and Safe Streets Act, which was signed into law in 1968 was, in fact, the law, even in the absence of clarifying regulations or a clarifying decision issued by the Supreme Court of the United States. There is no such thing as a law awaiting some clarification by the court. The 1968 decision was law, and the President did not abide by the law which was in effect at the time these wiretaps in 1969 to 1971 were instituted.

I want to hear the opposition address themselves not simply to those wiretaps which relate to perhaps National Security Council employees, but what about those which relate to the newsmen who certainly know a lot, but know nothing about state secrets. What about those instances where wiretaps were instigated on the employees who had left the Government and long since had nothing to do with national security matters?

We read the summaries of those wiretaps, and you have heard us state that there was gossip and personal matters involved in some of the information educed.

I want the opposition to address themselves to all of the taps, not just those which may under some stretch of the imagination have had something to do with national security. A climate of leaks do not necessarily justify, and in my judgment do not in this instance justify a violation of fourth amendment freedoms.

The CHAIRMAN. The time of the gentlelady has expired.

The gentleman from California has 4 minutes remaining.

Mr. WIGGINS. I yield the 4 minutes to the gentleman from Indiana, Mr. Dennis.

The CHAIRMAN. The gentleman from Indiana is recognized.

Mr. DENNIS. I thank the gentleman, Mr. Chairman.

First I would like to call attention to exactly what the *Keith* decision, which had not become law at the time we are talking about, held. The *Keith* decision stated that it was necessary to get a court warrant before instituting wiretaps in matters which involved only the domestic aspects of national security. That was not handed down at the time we are talking about, which was back in 1969, and the general assumption in governmental circles was that you did not need a prior court order to institute wiretaps for the domestic aspects of national security at that time. The contrary had never been held.

But, it is important to know what the *Keith* decision did hold, even when it was handed down, and I read from the opinion of the court.

We emphasize before concluding this opinion the scope of our decision. As stated at the outset, this case involves only the domestic aspects of national security. We have not addressed and express no opinion as to the issues which may be involved with respect to activities of foreign powers or their agents.

And in the footnote they say for the view that warrantless surveillance though impermissible in domestic security cases may be constitutional where foreign powers are involved see *United States v. Smith* and so forth.

Now, a great many of these wiretaps here were cases where foreign affairs were certainly involved and where foreign powers were certainly interested and where some people might even have been agents of foreign powers and even under this decision would still in all probability be lawful?

Addressing what the gentlelady from Texas said, the court said further, "Nor does our decision rest on the language of section 2511 or any other section of title III of the Omnibus Crime Control and Safe Streets Act of 1968. That Act does not attempt to define or delineate the powers of the President to meet domestic threats to the national security."

It did not apply to it. It had to do with ordinary crime. So they did not take any guidance from the act. They did not speak where foreign people were involved. And they then held for the first time that strictly domestic national security required a court order.

Now, back in 1969 there were a lot of important leaks. In early March—and I am using now the books of our testimony, both the President's presentation and our own presentation—in early March of 1969, and this is from the President's presentation to our committee, a decision was reached to conduct B-52 raids into Cambodia. They were conducted secretly and we had it in our testimony, too, to maintain the tacit approval of Prince Norodom Sihanouk.

However, on May 6, 1969, William Beecher accurately reported these raids in the New York Times, jeopardizing the relationship with Prince Sihanouk.

On April 1, 1969, the Department of Defense made a troop study about withdrawing troops from Vietnam. It had not yet been discussed with the South Vietnamese Government. Before it was discussed with the South Vietnamese Government, on April 6, 1969, Mr.

Frankel ran an article in the New York Times, which jeopardized our relationship with the South Vietnamese Government.

Mr. Kissinger so testified in an affidavit which he filed.

The CHAIRMAN. The gentleman—

Mr. DENNIS. And other similar matters all happened in 1969, and to finish my sentence, "Dear Mr. Hoover," Agent Sullivan wrote in May, 1969, "I thought you would like to know that Colonel Haig called me this morning to advise that they are releasing X today. At least this is one leak that will be stopped. Respectfully, W. C. Sullivan."

The CHAIRMAN. The time of the gentleman has expired. All those—time in support of the amendment has all expired.

There are remaining 4 minutes for those in opposition to the amendment.

I recognize Mr. Hogan for 4 minutes.

Mr. HOGAN. Thank you, Mr. Chairman.

As our extremely articulate colleague from Texas, Ms. Jordan, indicated, we are not here debating the President's authority to tap phones in national security matters, nor are we debating those areas where in criminal cases on a warrant phones may be tapped. My good friends on this side of the aisle are, if they will forgive me, engaged in a shell game. They are trying to put the emphasis on whether or not there is wiretap authority. What the issue is here is illegal wiretaps.

Now, when the Time magazine story was about to break, the President was involved in the—about the wiretaps program at the White House, the President was involved in the creation of a fabrication that there was no such program. Subsequently, he publicly acknowledged it and as late as July 12, 1974, in a letter to the chairman of the Foreign Relations Committee he states: "I personally directed the surveillance, including the wiretapping of certain specific individuals."

Now, my friends are talking about the Ellsberg leaks. I share their concern about that. I think it was reprehensible. One of the greatest tragedies in all of this is that because of the misconduct of employees at the White House and the President, Ellsberg escaped prosecution for leaking that confidential information, and I abhor that as much as anyone on this side of the aisle. But there is absolutely no justification for some of the pure, the pure and simple illegalities involved in this area of the law.

The Secret Service has no authority, statutorily, to tap phones. They did at the direction of the White House and obviously at the direction of the President tap the phone of his brother, with no statutory authority.

The CIA was asked and some times they refused, and some times they cooperated, in activities inside the United States. Their statutory authority specifically forbids them to be involved in any domestic activities.

Directing the FBI to investigate Daniel Schorr because they did not like the kinds of things he was saying about the administration was another misuse of the President's power. When it was discovered, they said he was being considered for a job.

We had testimony here that that was a story which the President helped to fabricate. He at no time was under any consideration for a job.

Now, let's look to some of the specific wiretaps. The Joseph Kraft wiretap. If it was a criminal case they needed a warrant. They had no warrant. If it was a national security case, they needed the approval of the Attorney General. They had no approval from the Attorney General. He was not involved in publishing leaked materials. That was pure and simple an effort to get information on a so-called White House enemy.

It has been said many times about the former National Security Council employees who left their jobs and the wiretaps continued for a long time.

There is only one thing I want to add to that. Indicative of what they had in mind here was that Henry Kissinger no longer got those wiretap reports for the 8 additional months while they were working for Senator Muskie. They then went to Haldeman who was not concerned directly with the National Security Council.

Now, another thing that disturbs me about this is that Alexander Haig directed the FBI "on the highest authority not to maintain regular records of the wiretaps and not to treat them in the same fashion that other national security taps were treated by the FBI," and the Joseph Kraft's tap went into that category. So there were no records of the FBI, so that when the Department of Justice was asked in the *Ellsberg* case if they had ever overheard him in any conversations, the Justice Department directed the FBI to check their files, they came back and said no, there is no evidence of any indication of wiretaps because the records were all at the White House.

As I indicated this morning, they were personally delivered to the Oval Office by Mardian, direct Presidential involvement.

I wish I had another hour.

The CHAIRMAN. The time of the gentleman has expired. All time has expired. And the question now occurs on the amendment No. 2 offered by the gentleman from California. All those in favor of the amendment please signify by saying aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed.

[Chorus of "noes."]

The CHAIRMAN. The noes appear to have it.

The gentleman from New Jersey?

Mr. SANDMAN. I demand the yeas and nays.

The CHAIRMAN. The gentleman demands a call of the roll and the yeas and nays are ordered.

All those in favor of the amendment, please say aye. All those opposed, no.

The clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

Mr. BROOKS. No.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. No.

The CLERK. Mr. Edwards.

Mr. EDWARDS. No.

The CLERK. Mr. Hungate.

Mr. HUNGATE. No.

The CLERK. Mr. Conyers.  
 Mr. CONYERS. No.  
 The CLERK. Mr. Eilberg.  
 Mr. EILBERG. No.  
 The CLERK. Mr. Waldie.  
 Mr. WALDIE. No.  
 The CLERK. Mr. Flowers.  
 Mr. FLOWERS. No.  
 The CLERK. Mr. Mann.  
 Mr. MANN. No.  
 The CLERK. Mr. Sarbanes.  
 Mr. SARBANES. No.  
 The CLERK. Mr. Seiberling.  
 Mr. SEIBERLING. No.  
 The CLERK. Mr. Danielson.  
 Mr. DANIELSON. No.  
 The CLERK. Mr. Drinan.  
 Mr. DRINAN. No.  
 The CLERK. Mr. Rangel.  
 Mr. RANGEL. No.  
 The CLERK. Ms. Jordan.  
 Ms. JORDAN. No.  
 The CLERK. Mr. Thornton.  
 Mr. THORNTON. No.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. No.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. No.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. No.  
 The CLERK. Mr. Hutchinson.  
 Mr. HUTCHINSON. Aye.  
 The CLERK. Mr. McClory.  
 Mr. MCCLODY. No.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. Aye.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. Aye.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. No.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. Aye.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. Aye.  
 The CLERK. Mr. Fish.  
 Mr. FISH. No.  
 The CLERK. Mr. Mayne.  
 Mr. MAYNE. Aye.  
 The CLERK. Mr. Hogan.  
 Mr. HOGAN. No.  
 The CLERK. Mr. Butler.  
 Mr. BUTLER. No.  
 The CLERK. Mr. Cohen.



Mr. COHEN. No.

The CLERK. Mr. Lott.

Mr. LOTT. Aye.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. No.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. Aye.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. Aye.

The CLERK. Mr. Latta.

Mr. LATTA. Aye.

The CLERK. Mr. Rodino.

The CHAIRMAN. No.

The CLERK. Mr. Chairman?

The CHAIRMAN. The clerk will report.

The CLERK. Ten members have voted aye, 28 members have voted no.

The CHAIRMAN. The amendment is not agreed to.

I recognize the gentleman from Maine for purposes of the offering of an amendment.

Mr. COHEN. Mr. Chairman, I have an amendment at the desk.

The CHAIRMAN. The clerk will read the amendment.

The CLERK [reading]:

Amendment by Mr. Cohen.

On page 3, subparagraph 4, strike line 7 and insert in lieu thereof the following new language, "National Committee and the cover-up thereof and concerning other unlawful activities including those relating to the confirmation of Richard Kleindienst as Attorney General of the United States, electronic surveillance of private citizens, the break into the offices of Dr. Lewis Fielding and the campaign financing practices of the Committee to Re-Elect the President."

Mr. COHEN. Mr. Chairman?

The CHAIRMAN. The gentleman is recognized.

Mr. COHEN. Mr. Chairman, I might just briefly indicate this is the long-awaited amendment put together by Mr. Butler and myself, calling for greater specifics in the subparagraph 4. I think we all agree, at least I do and Mr. Butler, that the statement was too general.

I want to commend Mr. Wiggins for drawing our attention to it, Mr. McClory for perfecting it, but I think these are the specific areas that would warrant inclusion under that subparagraph and I would urge my colleagues to support it.

Mr. HUNGATE. Would the gentleman yield?

Mr. COHEN. I will yield to the gentleman from Missouri.

Mr. HUNGATE. I will be pleased to accept this as an improvement in the language and accept it, move it—

The CHAIRMAN. The question is on the amendment offered by the gentleman from Maine.

All those in favor of the amendment please signify by saying aye.

[Chorus of "ayes."]

The CHAIRMAN. Opposed.

[Chorus of "noes."]

The CHAIRMAN. The amendment is agreed to.

The gentleman from California is seeking recognition.

Mr. WIGGINS. Yes, Mr. Chairman.

I have a motion to strike subparagraph 3 at the desk.

The CHAIRMAN. The clerk will read the amendment.

The CLERK [reading] :

Amendment by Mr. Wiggins.

In the Hungate substitute, strike subparagraph 3.

The CHAIRMAN. The gentleman from California.

Mr. WIGGINS. Mr. Chairman, I yield 5 minutes to the gentleman from Iowa, Mr. Mayne.

The CHAIRMAN. The gentleman is recognized.

Mr. MAYNE. I thank the gentleman for yielding to me.

This particular paragraph is the one which make the charge of setting up the special investigations unit in the White House, so-called Plumbers unit.

Now, I think that in considering this charge, it is necessary to think of the background under which the President made this decision and part of that background is what the gentlewoman from Texas has referred to as the climate of leaks.

There is no question that there had been a series of very damaging and serious leaks for several years. One has already been referred to by Mr. Moorhead as the leak in 1969 of the secret estimates of the U.S. Intelligence Board of Soviet strategic strength, and particularly of Soviet first strike power. This was a highly confidential document, but it was released by some official, leaked to a reporter and appeared in the New York Times on June 18, 1969, stating our estimates of Soviet first strike power.

Then came—I will not recite all of the leaks that intervened. But probably the most famous one was the release and publication of the so-called Pentagon Papers which had to do with our decisionmaking process in Vietnam.

Those started to appear in the New York Times on June 28, 1971, at a time when our troops were still involved in combat in Vietnam, at a time when Dr. Kissinger was engaged in highly sensitive negotiations to end the war in Vietnam in Paris.

On June 28, 1971, Dr. Ellsberg openly boasted in a public conference that he had made these—that he had these papers copied and had furnished them to the newspapers. It was reported to the President that this man had been a highly trusted employee in the Defense Department during the Johnson administration, that he possessed other highly secret information of current validity and danger, including our nuclear deterrent targeting capability. And Dr. Ellsberg in his press conference had invited others to join with him. He was carrying on a publicity propaganda campaign asking others also to join him in his opposition to the manner in which the administration was winding down the war in Vietnam which did not meet with his approval.

Now, this was a highly dangerous situation. The President, who was responsible for the national security, had a clear duty to act. He had to do something. He elected to set up this special investigations unit in the White House.

Now, I do not happen to agree with the way in which he acted. I think it would have been much wiser for him to rely upon the Federal Bureau of Investigation, which was the established agency with long experience and knowledge in national defense security investigations, but it is very easy for me and it is very easy for critics of the Presi-

dent, with the benefit of hindsight, to say that he should have gone the other way.

But who is to say when a man charged with that awesome responsibility has to make a decision to protect the security of the United States if he does not make precisely the correct decision? Act he must and act he did.

Now, another very current instance of national security leak occurred shortly thereafter while the special investigations unit was still being implemented, and that occurred on July 23, 1971, in connection with the SALT talks, the Strategic Arms Limitation Agreement discussions in Helsinki.

Here we were trying to negotiate the numbers of ground-based and submarine-based missiles and antiballistic missiles which were to be constructed by us and the Soviet Union. There could be nothing more vital to the defense of the United States and to the interests of the United States than our ability to defend ourselves against nuclear attack. Yet, in advance of—we had leaked by some official or officials in our Government our fallback position.

Now, everyone knows that in negotiations you do not reveal your final position. You try to get the best agreement for your side that you can, and this is certainly true more in the national defense than anything else. But in this article which appeared in the Times, they did clearly reveal that the Americans were prepared to ask something less if their full American bargaining package was not offered.

Now, this—

The CHAIRMAN. The gentleman has consumed 5 minutes.

The Chair will recess, since there is a rollcall vote, and recess until the vote has been cast, and return immediately after the vote has been cast.

[Recess.]

The CHAIRMAN. At the time the committee recessed, the gentleman from Iowa, Mr. Mayne, had consumed 5 minutes in support of the amendment.

I recognize the gentleman from New York, Mr. Fish, in opposition to the amendment, for 4 minutes.

Mr. FISH. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, I think this article II dealing as it does with the abuse of the enormous power of the Federal Government against the citizens is an issue that is particularly abhorrent to a democratic people. The illegal activities of the Plumbers is the subject of the third provision which we have before us a motion to strike.

I know there are several who want to talk on this paragraph, and I will attempt to be brief.

As we know, on June 13, the New York Times published the first installment of the Pentagon Papers. The President, through Halde- man, directed Mr. Colson to prepare a memorandum stating his recommendations on the Pentagon Papers issue.

The memorandum of Mr. Colson, dated June 25, recommended that the investigation and successful prosecution of Ellsberg was an op-

portunity for political gain for the President by publicity discrediting Mr. Ellsberg.

As we know also, Mr. Ellsberg was indicted on June 28.

The genesis, I suggest to you, of the Plumbers was the Pentagon Papers and in a meeting between the President, Mr. Ehrlichman, and Mr. Mitchell on July 6, we have the discussion on forming a "nonlegal group in connection with the Pentagon Papers affair."

So there is no question here of Presidential knowledge. The question has been raised, and will be raised again, however, that the issue was national security from the start, that this legitimized the formation of the Plumbers and the effort to publicly discredit Mr. Daniel Ellsberg.

Mr. Jenner, I have asked you during this break a few minutes ago to find for me certain citations I recall of conversations between the principles in this matter that showed to me clearly that it was a public relations effort they had in mind and that national security in the Pentagon Papers was not the issue.

Could you refer to those citations, please?

Mr. JENNER. May I, Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. The following items appearing in the Ehrlichman notes which, by the way, will be delivered to all of you tomorrow with a covering memorandum, I will read without comment.

I think they speak for themselves.

On July 1, 1971, a meeting of the plaintiff, Mr. Ehrlichman, at 10:15 in the morning, and Mr. Colson.

Did I say the President? If I didn't, I should have.

Item No. 8 reads, "Leak stuff out." "This is the way we win."

The next is also July 1 at 1 p.m., a meeting with the President. It bears the following entry labeled item No. 1. "Espionage not involved in Ellsberg Case." Did I say 21—29. His case, "Breach of security. Willful disclosure without intent to commit espionage."

The same meeting later, note No. 30, "Timing—do not react to Ellsberg Case. Don't think in terms of spies."

July 6, 1971. The President, the Attorney General, Haldeman and Ehrlichman.

Note No. 11. The President is saying this, "Put a non-legal team on the conspiracy." That is—

The CHAIRMAN. The gentleman's 4 minutes has expired.

I recognize the gentleman from Michigan, Mr. Conyers, for 4 minutes.

Mr. CONYERS. Thank you, Mr. Chairman and Members. I rise, of course, in opposition to the motion for strike and I must observe that for the second time in a row we have clauses that have attempted to persuade the American people and our colleagues in this immediate vital judgment that national security itself was a justification for the illegal activities emanating directly from the White House and I am very sorry to say from the authority and the condonation of the President of the United States himself.

And I think that we cannot here today make this record too replete with the documentation that says once and for all that the bugaboo of national security will no longer suffice to intimidate the Congress

or scare the American people into condoning activities of the kind that we have heard here in article II in these proceedings.

I want to assert, and I am sure my other colleagues that follow me will, that the President was in fact directly responsible for the creation of the Plumbers. It is documented in our evidence. The President publicly admitted it, that he approved the creation of a special investigation unit, the Plumbers. For the first time in our history the people of this Nation were treated to the spectacle of a secret intelligence unit operating not in the FBI, not in the CIA, nor the Secret Service, but in the White House under the direction of White House employees reporting directly to the President of the United States.

John Ehrlichman in his own trial, the Domestic Affairs Adviser of the President, testified that he asked the CIA, can you imagine, our foreign intelligence agency, to help and that he asked the CIA to help Howard Hunt at the direction of the President of the United States. And he said,

In my personal experience my requests of the CIA were always at the specific instance of the President. I never did make a step to ask the CIA to do anything without the President having authorized me to do so in advance.

So the fact is that the President could and expected that the Plumbers, a clandestine secret organization, would in fact operate illegally.

The President had, you may recall, approved the Huston plan only a year before, knowing full well that it sanctioned admittedly illegal activity.

According further to the notes of the President's former Domestic Adviser of his meeting with the President on July 6, 1971, the President asked: "Could a nonlegal team on the conspiracy."

Now, we have learned during these months in the euphemisms of White House parlance that stonewalling, modified hangout has a significance all its own and a nonlegal team suggests precisely that, and Ehrlichman's notes reflect the assignment of David Young, cochairman of the Plumbers to a special project.

Mr. Ehrlichman testified further before the grand jury that the President of the United States had prior knowledge of the first trip by Mr. Liddy and Mr. Hunt. I am sure you remember those names from June 17, 1972, to go to California to case the Fielding office.

The CHAIRMAN. The 4 minutes of the gentleman have expired.

The Chair calls attention to the fact that there is a rollcall vote, and the Chair will recess the committee until 7:30. And the Chair would also like to observe that at this time 8 minutes have been consumed by those in opposition to the amendment and 5 minutes in support of the amendment and the balance of the time will be reserved by the opponents and the proponents.

The committee is recessed until 7:30.

[Whereupon, at 5:42 p.m., the committee was recessed, to reconvene at 7:30 p.m. this same day.]

#### EVENING SESSION

The CHAIRMAN. The committee will come to order.

At the time the committee recessed, the committee was debating the Wiggins motion to strike paragraph 3, and those in opposition to

the amendment had consumed 8 minutes, and those in support of the amendment had consumed 5 minutes. And I now recognize the gentleman from California, Mr. Wiggins, for such time as he may consume out of that time.

Mr. WIGGINS. Mr. Chairman, I yield 5 minutes of my time to the gentleman from Iowa, Mr. Mayne.

The CHAIRMAN. Mr. Mayne is recognized for 5 minutes.

Mr. MAYNE. Thank you, Mr. Chairman.

Those of this panel who would impeach the President for setting up the special investigative unit would have us believe that there was just no national security involved in it at all.

Well, then, why is it called the Plumbers, the Plumbers unit?

It was called the Plumbers because its purpose was to plug leaks of secret information vital to the national security of the United States.

There were many instances where those leaks occurred. I mentioned several of them just before the recess. There was the secret U.S. Intelligence Board's report in which it estimated the Soviet Union's strategic strength and the Russians' first-strike capacity, a matter of great importance to our defense effort. Well, that was leaked by a Government official to a reporter who printed it in the press for the Russians' information.

There was the disclosure by one of our senior officials, at least so the newspaper reporter said, of our secret fallback position, our final offer in the SALT talks the strategic arms limitation negotiations, in Helsinki in 1971. Our negotiators there, our negotiating team, were trying to achieve as much security for the United States as possible from nuclear attack.

The package which we had on the table therein dealing with the Russians was asking them to stop the construction of all nuclear missiles, both land and submarine based.

But, according to another reporter, one of our senior officials confided in him that we were willing to settle for less, that we did not really expect to get that much security from the Russians, and that if they turned us down we would be willing to settle for just a ban on construction of land-based missiles, and let go ahead with the submarine based.

Well, now, when that was printed in the newspaper, and the Russians read it, you can imagine what that did to our chances of getting the more secure arrangement, the greater protection for our country. That was definitely a security leak which needed to be plugged.

Then there was the release of the Pentagon Papers by Daniel Ellsberg also in June of 1971. Of course, Ellsberg had been identified so that case is somewhat different, because the President's highest national security and foreign policy advisers had warned him that it was extremely important that these officials, who were leaking this information, be identified and stopped.

Well, Ellsberg had been identified, but it was by no means certain that he would not leak more information. Only part of the Pentagon Papers had been published at that time. It was not known whether he would go ahead with the rest, and there was also reason to believe that he had additional information.

John Ehrlichman, in an affidavit, a sworn affidavit in April of this year, testified that in a week or 10 days after the publication of the

first Pentagon Papers, these papers were related to our decisionmaking processes in a war which was still going on, in which American troops were still in combat, which Kissinger was trying to settle in sensitive negotiations in Paris, and Ehrlichman said that Henry Kissinger met with him and the President and hold them about Daniel Ellsberg, and told him that he was, and I quote: "In knowledge of very critical defense secrets of current validity, such as nuclear deterrent targeting." And I am reading from page 621 of book 7, part 2, and I continue the quote: "having never heard of Ellsberg before theft of the papers, my impression from Kissinger's description was that the Nation was presented with a very serious potential security problem beyond the theft of the larger historical Pentagon Papers. I later learned that the papers themselves were believed by defense experts to contain vital secrets. Dr. Kissinger told the President that the theft made very difficult our foreign relations with allies with whom we shared classified information. In these meetings, both the President and Dr. Kissinger were obviously deeply concerned."

The CHAIRMAN. The gentleman has consumed 5 minutes.

Mr. MAYNE. May I have 1 additional minute, Mr. Wiggins?

The CHAIRMAN. The gentleman is recognized for 1 additional minute.

Mr. MAYNE. Now, the President, ladies and gentlemen of the committee, felt on the advice of his closest foreign policy and national defense advisers that he had to act to protect the national security to stop these leaks. In my judgment and perhaps yours, he acted unwisely in setting up this special investigative unit headed by a brilliant young man who had no investigative experience. I believe and I think you do, that it would have been much better to rely on the FBI which had experience in this field and would have known the legal limits and the practical limits in which to carry out a proper national security investigation.

But is the President of the United States to be impeached because he made an error in judgment, because he was not perfect in his decision to act quickly and necessarily to protect the national defense? Is it a high crime and misdemeanor not to be letter perfect in the performance of your office? I think not, and I think this ground, alleged ground of impeachment simply should not receive serious consideration by the committee.

The CHAIRMAN. The gentleman has consumed that other minute.

I recognize the gentleman from California, Mr. Waldie, for 3 minutes.

Mr. WALDIE. Thank you Mr. Chairman.

Mr. Chairman, I think this particular issue is one of the most serious offenses alleged against the President. It relates back to one of the remarks that I made in the opening session of this committee when I suggested that the liberties of this country were enormously fragile and had been subjected to an assault, the likes of which we have not seen in our lifetime, and I think this particular case, the Fielding break-in particularly as an activity of the Plumbers, indicates the insensitivity of the President to the constitutional obligations that he had as the President of this country to protect the people in their liberties.

One of the basic stability points of a free society is that the law enforcement authority of that society is accountable, and the moment

you destroy accountability of law enforcement authority, you jeopardize and endanger freedom of individual citizens and when the President denied the opportunity of the legitimate law enforcement institutions of this Government, the Federal Bureau of Investigation and the Central Intelligence Agency, denied taking his problems with security to them for resolution and sought to set up an extracurricular secret police force accountable to no one in this Government or in this society except to the President individually and as a person, he in my view was in a major way interfering with the constitutional protections that have been set up to protect liberty.

Now, for the President's defenders to suggest that it was an extraordinary departure from the institutions of law enforcement but warranted because of the threat of national security, the burden is then clearly upon them to establish that the activities of the Plumbers were in fact designed to protect the national security, and I call attention to what I thought was a very important statement of my colleague, Mr. Conyers from Michigan, where he pointed out that we must now, once and for all, draw a line with the use of national security as an excuse for all sorts of illegal and illicit activities generally that result in erosion of freedom. And just to test whether or not national security really was the purpose of this burglary in California when Dr. Fielding's offices were burglarized by the Plumbers to procure access to the psychiatric files of Daniel Ellsberg allegedly for a national security purpose, but in reality to interfere with the trial that was to begin involving Dr. Ellsberg, you only have to examine the language of the President in his conversations with Mr. Dean on March 17 and March 21.

The CHAIRMAN. The time of the gentleman has expired.

Mr. WIGGINS. I will be happy to yield to my colleague from California for the purpose of completing his sentence.

Mr. WALDIE. Well, I appreciate that. If I—it is hard for me to complete a sentence when I want to analyze a conversation, but let me just—

Mr. WIGGINS. Do the best you can. [Laughter.]

Mr. WALDIE. I appreciate that. I do appreciate that.

I referred to March 21 and the conversation that I will be reading will be a description of how the Ellsberg case became a national security case.

The President is told by Dean about the break-in out there and he says, the President said, "I don't know what the hell we did that for," and Dean said, "I don't either," and the President said, "Who in the name of God did that?"—and then move on to page 112 of the March 21 transcript and the President says, "Properly, it has to do with the Ellsberg thing. I do not know what the hell, uh"—and Haldeman says, "Well"—. The President says, "I don't know."

The President says, "What is the answer on that? How do you keep that out? I don't know, well we can't keep it out if Hunt"—"the point is, it's irrelevant."

Dean says, "You might, you might put it on a national security grounds basis, which really, it was." Haldeman says, "It absolutely is." And Dean says, "And just say that—uh." The President says, "Yeah." And the—

The CHAIRMAN. The other minute of the gentleman has expired.



Mr. WALDIE. Well, I really did not finish the sentence. [Laughter.] It is a long sentence.

Mr. WIGGINS. I think you have. I think you have.

Mr. Chairman, how much time do we have remaining on this side?

The CHAIRMAN. The gentleman from California has 8 minutes remaining.

Mr. WIGGINS. I will be happy to yield to my colleague from Ohio, Mr. Latta.

The CHAIRMAN. The gentleman from Ohio is recognized for 4 minutes.

Mr. LATTI. Thank you, Mr. Wiggins.

I thank the gentleman from California. This is about the longest minute we have thus far.

Let me say he mentioned one conversation that I think we ought to go back to a prior conversation. His minute did not permit him to do that. And I have reference to the first time that the President of the United States found out about this, months after the break-in. And that is the conversation between the President and John Dean on March 17, 1974. Let's read that.

Dean. "The other potential problem is"—

Ehrlichman. "And this"—and the President spoke up and said, "In connection with Hunt?" Dean says, "In connection with Hunt and Liddy both."

The President inquires, "They work for him?"

Dean. "They—these fellows had to be some idiots and we have learned after the fact. They went out and went into Dr. Ellsberg's doctor's office and they had—they were geared up with all this CIA equipment, cameras and the like. Well, they turned the stuff back in to the CIA at some point in time and left the film in the camera."

Good sleuths, I might interject.

"The CIA has not put this together, and they don't know what it all means right now."

And the President says, "What in the world, what in the name of" blank "was Ehrlichman having something," and this is unintelligible, "in the Ellsberg?"

This is the first time he ever heard of it, months after this had taken place.

Dean says, "They were trying to—this was a part of an operation in connection with the Penatgon Papers. They were—the whole thing—they wanted to get Ellsberg's psychiatric record for some reason. I don't know."

President, "Well, this is the first I ever heard of this. I"—unintelligible again, and perhaps some expletives that were not deleted—"care about Ellsberg was not our problem," and Dean says, "That is right."

Now, the gentleman from Iowa has mentioned something about the FBI not getting into this case and I think we had better talk about that. It was brought out before our committee. The late J. Edgar Hoover happened to know the father-in-law of Mr. Ellsberg and the FBI was not responding to the prodding of the administration to get on with investigating these leaks to which I shall refer in considerable length when we get on general debate on the articles themselves.

Mr. Chairman, I yield back the balance of my time to Mr. Wiggins.  
Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. The gentleman has 3½ minutes remaining out of the total.

Mr. WIGGINS. May I be recognized?

The CHAIRMAN. The gentleman is recognized.

Mr. WIGGINS. Mr. Chairman, it was my intention to discuss the Huston plan and to clarify for the benefit of our members the origin of that plan and to demonstrate that it was a plan of the top security people in this country recommended to the President of the United States, and he acted pursuant to their advice and approved their plan for a period of about 4 or 5 days and thereafter canceled his prior approval upon the recommendation of the Attorney General. I only intended to take the time on that subject because some of my colleagues seem to be concerned about that 4- or 5-day period of approval by the President of the United States in 1970.

Rather, in my remaining moments, Mr. Chairman, I want to try to place this Plumbers issue in its proper focus. The question is not whether the creation of the Plumbers was justified. There is no law nor regulation nor rule nor act of Congress prohibiting the President of the United States from establishing a unit within the executive branch for the purpose of coordinating intelligence activities. That is not the issue. The issue rather is whether or not the activities of that, once created, constituted an impeachable offense with respect to the President. We know that they do not, unless the President approved them, had knowledge of them, acquiesced in them, condoned them.

Well, we now know as a result of the splendid contribution of my friend from Ohio that the President did not learn of these activities with respect to Dr. Fielding for nearly 18 months after they happened.

It is the first time he learned about it. And now the question is should he be impeached, should he be impeached because he took an improper act upon learning of that activity.

The President, without question, ladies and gentlemen regarded the Pentagon Papers matter as a national security issue. It is idle to talk about whether a conviction is proper under the Espionage Acts, those acts, as my colleagues at the desk know, involving a foreign power. It was not the motive of Dr. Ellsberg, ladies and gentlemen, it was the fact of the disclosure. Whatever his motive, that prejudiced the United States of America. And the President's actions were prompted by reason of the fact of the disclosure rather than any subjective motive of Dr. Ellsberg to aid a foreign power, a fact which would be very important in a prosecution under the Espionage Acts.

That is the issue. That is the issue, whether or not after the 17th of March 1973, when the President learned of an act which happened about a year and one-half prior to that, whether he acted prudently given his state of knowledge and belief at that time. And I am telling you that the weight of the evidence, the overwhelming weight of the evidence is that Richard Nixon believed the Pentagon Papers issue was a national security issue, and his actions after learning in March of 1973 were wholly consistent with that belief on his part.

Now, if a majority of the committee really believes that a President of the United States should be impeached because of his honest and good faith belief that the security of this Nation is in jeopardy, and

that decisive and bold action is required on his part, then so be it. But, ladies and gentlemen, you live with that judgment. History is going to judge you ill if you make that judgment. This is not a proper grounds to impeach the President of the United States.

I will yield back the balance of my time.

The CHAIRMAN. I recognize the gentleman from Maryland, Mr. Sarbanes, for 3 minutes.

Mr. SARBANES. Thank you, Mr. Chairman.

I think it is very important for the members of this committee and the American people to appreciate exactly what the Plumbers did in the Fielding break-in. The Plumbers broke into Dr. Fielding's office. Dr. Fielding was not under suspicion. They went into his office in order to get his files on one of his patients. And I ask every doctor and lawyer and every insurance agent and accountant in the country what kind of a land would you be living in if a group of hired hands have the power to come into your office in the dead of night in order to get one of your files? If the purpose was legitimate, why did they not obtain those files in a lawful manner? And the answer is, of course, that the purpose was not legitimate.

Who were the Plumbers? They were a band of hired hands. They were not law enforcement officials. Why was not the FBI brought into this matter if it were a legitimate matter for governmental actions? Because the Plumbers were doing absolutely illegal things that the FBI refused to do and that goes back to the Huston plan of the previous year. Then this staff person, Huston put forward to the President, and had approved, a plan that involved surreptitious entry. His report stated "the activity involves illegal entry and trespass" and the FBI added a footnote to that report and said "The FBI is opposed to surreptitious entry." That same Huston report provided for covert mail coverage, and the FBI added a footnote and said "The FBI is opposed to implementing any covert mail coverage because it is clearly illegal." They could not use the FBI because the FBI was not prepared to do these illegal things.

Let us look at one other thing. From whence did the Plumbers get their money? Where did the money come from in order to do this operation? Ladies and gentlemen, it came from a private source, Mr. Baroody, a PR man here in Washington, a close friend of Mr. Colson's who states in an affidavit that in the latter part of August or the early part of September "Mr. Colson telephoned me and told me that the White House had an urgent need for \$5,000." So, he took \$5,000 over to Colson's office and was told to go down to another office and give it to the fellow that he would find there. That fellow was Egil Krogh, the head of the Plumbers unit. So, Baroody goes down there with his \$5,000 in cash and gives it to Krogh.

Krogh was questioned before the grand jury as follows:

*Question.* Did you look in there to see what it was?

*Answer.* I looked in the envelope to see this was money inside of it. . . . It was in the form of cash.

*Question.* Had you stated to Mr. Colson anything about the form in which you wanted the funds, whether it should be in cash or not?

*Answer.* I believe I specified cash.

*Question.* Why did you specify cash?

*Answer.* I believe because it was felt that there shouldn't be any way to trace the money that was to be used.

The CHAIRMAN. The 3 minutes of the gentleman has expired.

I recognize the gentleman from Massachusetts, Father Drinan, for 3 minutes.

Mr. DRINAN. Thank you, Mr. Chairman.

This fiasco called the Plumbers had three names. It started out as Project Ellsberg. David Young named it the Plumbers, and the President, 18 months later, gave it the name of Special Investigative Unit. It was political and covert and unlawful from the beginning.

Patrick Buchanan had the good sense to decline the good job that had been offered to him to be head of the Plumbers, and so, on July 8, 1971, he gave the best description of the purpose of the then Project Ellsberg. He wrote in a memo to Mr. Haldeman that "This is a project for a 3-month period to link the Pentagon Papers with the left-wing newspapers and people of America."

There was no national security involved. Mr. Pat Buchanan had an alternative which he thought was better. "Let us undertake a major public attack on the Brookings Institute."

Everyone had hysteria over the Pentagon Papers except Melvin Laird. Ten days after they were released he said that 98 percent of the Pentagon Papers could have been and should have been declassified. The hysteria, I assure you, was created months after when the identity of the Plumbers came out.

In Mr. St. Clair's brief on page 94 he said that the Special Investigative Unit was created "in an entirely legal manner." And I doubt if he can support that because this is an entirely outside of the ordinary that the executive branch of government operates. Mr. St. Clair concedes at a moment in time that there was a shift in the Unit's way of acting. But, he said that the purpose was legitimate.

He failed to tell us why they had sterile phones whatever they are, in this little cubbyhole in the Executive Office Building and why you needed special passes to enter this section and why, in total defiance of the law of the CIA, they regularly violated that prohibition against any internal security matters of the CIA.

Mr. Henry Petersen testified before this committee on July 12 that he said there is no area of violation of Federal criminal laws which was not covered by existing statutes and that if there is any residual jurisdiction it goes to the Department of Justice. I suggest therefore, that this was political and unlawful from the beginning and the names came later.

If the President says that there is an epidemic of leaks, that is not substantiated by the evidence.

And let me quote you one justification that has come out today in a minority report from this committee that demonstrates the hysteria that is still going on and with that I close. And the statement says in justification of the Plumbers that "Foreign espionage agents can read English and they can read the New York Times."

Thank you very much, Mr. Chairman.

The CHAIRMAN. The time of the gentleman has expired.

I recognize the gentleman from Maine, Mr. Cohen, for 3 minutes.

Mr. COHEN. Thank you, Mr. Chairman.

I would like to direct my attention to the final sentences of this paragraph whereby the President attempted to prejudice the constitutional rights of the accused to a fair trial. Several days ago the

gentleman from New Jersey made a statement that we must view the totality of the evidence, and I happen to agree with Mr. Sandman. He is absolutely correct, because only by viewing all of the evidence can we trace the threads of attitude and action that we are a pattern of spirit and conduct that is the very basis of our investigation. And I want to call your attention to the September 15, 1972, conversation between the President and Mr. Haldeman and Mr. Dean whereby Mr. Dean indicated he was talking about Edward Bennett Williams at which time the President says "We are going after him."

Haldeman says "This is the guy we have got to ruin."

And then I am skipping on to page 10 where the President says "I think we are going to fix," and I am paraphrasing, "the SOB. Believe me, we are going to, we have got to because he's a bad man."

Now, I think this statement is relevant that respect to the Ellsberg matter because Mr. Colson told us, as he told the court, that on several occasions the President urged Colson to disseminate information about Ellsberg and also his attorney, and this is the same act for which Mr. Colson pled guilty to corruptly endeavoring to obstruct the criminal trial by devising and implementing a scheme to defame and destroy the public image and credibility of Ellsberg.

Now, Ellsberg, in my opinion, and I agree with Mr. Hogan, he should have been prosecuted, but his trial should have gone to its full conclusion according to the due process of law. What was done in Ellsberg reminded me of what Commodore Vanderbilt said to his adversaries: "I won't sue you, I'll ruin you." The administration did not seek to sue or prosecute Ellsberg for his wrongdoing, they set out to ruin him, and that, ladies and gentlemen of this committee, is not only contrary to the spirit of our Constitution, it is also contrary to the laws as stated in the cases of *United States v. Krogh and Colson*. A man cannot set attack dogs loose on general instructions to stop and destroy leaks at any cost, and then say he is not responsible when the constitutional rights of citizens are shredded in the process.

Mr. HOGAN. Would the gentleman yield?

Mr. COHEN. I yield to the gentleman from Maryland.

Mr. HOGAN. I thank the gentleman.

The CHAIRMAN. The gentleman has 1 minute remaining.

Mr. HOGAN. I would just like to return to the wiretap matters that I was not able to finish earlier.

In addition to the Kraft wiretap having no criminal or national security basis, it was done by a consultant to the Committee to Re-elect the President, which makes it totally illegal.

In addition, under normal procedures, the Attorney General reviews the necessity and the propriety of wiretaps on national security matters every 90 days and this practice was not followed in respect to any of these 17 individual taps that the President authorized and approved.

Now, I would like to read from a transcript of the conversation between the President and Dean on February 28, 1973, on wiretaps when they were just talking about the Time Magazine story which revealed the wiretaps at the White House. The President says: "Sure. And the and the, and the, and Henry's—he insisted on Lake, you see after working with McGov—uh, uh, for Muskie." And Dean says: "Uh-huh."

And the President says: "Incidentally, didn't Muskie do anything bad on there? (unintelligible) Henry (unintelligible). At least I know not because I know that, I know that he asked that it be done, and I assumed that it was. Lake and Halperin. They're both bad." That's the President talking. "But the taps were too."

The CHAIRMAN. The time of the gentleman has expired. All time has expired.

And the question now occurs on the Wiggins amendment to strike paragraph 3. All those in favor of the motion to strike please signify by saying aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The noes appear to have it. The noes have it and the amendment is not agreed to.

I recognize the gentleman from Texas, Mr. Brooks.

Mr. BROOKS. Thank you, Mr. Chairman.

Mr. Chairman, in this debate we have neglected a most vital part of this article, that being section 1. I think it is very pertinent to this entire activity. It is a primary area of abuse that has subjected the American people to spying and prying and in the interest of debate, in that all of those members who have an interest in presenting the facts on this matter, section 1, and those who are opposed to it, I have an amendment at the desk to strike section 1 and would so move.

The CHAIRMAN. The clerk will read the amendment.

The CLERK [reading]:

Amendment by Mr. Brooks.

Strike subparagraph 1 of the Hungate substitute.

The CHAIRMAN. And the gentleman from Texas is recognized. In accordance with the rule recently adopted by unanimous consent, the gentleman recognizes that there is 20 minutes in opposition to the amendment and 20 minutes in support of the amendment.

The gentleman controls the 20 minutes in support of the amendment.

Mr. BROOKS. Mr. Chairman, I would ask that the time that I would use be deducted from the time of the opponents of this so that the proponent of this would not suffer in any way; we will have a full 20 minutes to utilize. I will yield to them as they request.

The CHAIRMAN. Without objection, so ordered.

Mr. BROOKS. Mr. Chairman, Mr. Nixon's personal involvement in efforts to misuse IRS for political purposes in violation of individual civil rights is clearly documented in events that occurred on September 15, 1972. In the tape of a meeting between the President, Mr. Haldeman, and Mr. Dean, there is no question that there was some discussion as to how efforts were going to get the IRS to institute audits, investigations of Mr. Nixon's political enemies. Some of the evidence involving Mr. Nixon's efforts to misuse the IRS has not been made available to this committee. The transcripts submitted to us do not include the last 17 minutes of this meeting with Haldeman and Dean on September 15. And yet Mr. Dean has testified that during that time there was a specific discussion about the plan to use IRS for these purposes.

Judge Sirica has listened to the entire tape and has announced in open court that those 17 minutes do indeed involve conversations re-

lating to the abuse of the IRS. He has since made those 17 minutes available to Mr. Jaworski but under the restraints put on him by the U.S. court of appeals has been unable to provide them to the Judiciary Committee. And needless to say, Mr. Nixon has not made this portion of the tape available to us despite his continuing protestation that he intends to cooperate fully with our investigation.

Now, we can only use the evidence that we have and that evidence, the September 15 tape, Judge Sirica's announcement, John Dean's testimony, the Johnnie Walters testimony, clearly indicate that there was a definite concerted plan to misuse the Internal Revenue Service for personal and political gain.

Now, Mr. Chairman, our constitutional safeguards protecting individual rights against arbitrary and unrestrained Government power mean very little to a President who would use the IRS for such distorted fashion.

I would reserve the balance of my time for those who are opposed or in favor of this proposition.

Mr. SANDMAN. Mr. Chairman?

The CHAIRMAN. The gentleman from New Jersey, Mr. Sandman.

Mr. SANDMAN. I am in an uncanny position, Mr. Chairman, because I can't figure out, as I couldn't yesterday, whether or not the proponent of the motion to strike really wants that motion carried. Now, if he does, he has my assistance, and I know a lot of other people will give him their assistance.

Now, before I comment I would like to hear from the gentleman from Texas. Do you really want to strike paragraph 1? Let me know how I should proceed. Will the gentleman from Texas please answer?

Mr. Brooks. I would be pleased to answer. I thought I had made clear to my distinguished friend from New Jersey that in the interests of debate, of getting the facts about just what happened to the IRS, how it was used, who told them to do it, what they did, that I thought that we ought to have this motion so that the people of this country and so this committee can fully evaluate just what happened, and I want you to have every advantage of a full 20 minutes to discuss why it should be included.

Mr. SANDMAN. That is fine, but I am still asking, wanting to know, do you want your motion passed?

Mr. Brooks. Well, to be candid about it, when you offer a motion for debate purposes you are not necessarily confined to wanting it passed and certainly I do—

Mr. SANDMAN. Oh, well, then—stop using my valuable time. The public now knows what you are up to.

Mr. Brooks. Glad to give you that time, Mr. Sandman.

Mr. SANDMAN. I am not going to hand you any more of that valuable time because it is obvious that this is a game. In fact, we have been involved in quite a few games here. And you aren't any more serious about striking this article than my friend from Alabama was yesterday in striking any of the articles that he tried to strike.

I am mindful of the fact that they tell me we have about a 20-percent audience which is about 44 million people and it gives exposure and maybe you can convince them with some of your generalities. That is the purpose behind all of this. I know it. And 44 million people know it. Make no mistake about it.

Now, I would like to yield some time to some other members of this side and I would like to yield to the gentleman from Indiana, Mr. Dennis.

Mr. DENNIS. Thank you, Mr. Sandman. I would like to say, Mr. Chairman—

Mr. SANDMAN. Four minutes.

Mr. DENNIS [continuing]. That if I felt that the evidence here substantiated that the Internal Revenue Service has been misused and abused for improper political or discriminatory purposes, I would take a very dim view of that myself. I would do so even though such abuse, misuse, and discrimination has not been entirely unknown in past administrations because that would not constitute a defense now even though nobody bothered to fool with it then.

I believe, for instance, that in his diaries the late Drew Pearson says that the late Harry S. Truman turned the IRS loose on him at one time, and that doesn't make it any better if it was done now but I think it is a good thing to bear in mind that we have a certain amount of pious hypocrisy in these proceedings from time to time.

Now, the truth of the matter is that there really isn't any evidence connected with the President again, if you please, which we are always sort of sloughing over here, than the President did anything out of the way about the IRS at all. The only thing they can even attempt to cite is the conversation of September 15, and as a matter of fact, the President doesn't refer to the IRS in that conversation. He says, "We have not used the power in this first 4 years as you know. We have never used it. We haven't used the Bureau—", that is the FBI—"and we haven't used the Justice Department." He doesn't talk about the IRS, as a matter of fact, but the interesting thing is that all that conversation is talk anyway.

Now, it is not good talk. It would be damaging talk if there was something to be shown that the President ever followed up on it. But I haven't seen anything in this record where the President did follow up on it.

The CHAIRMAN. The gentleman from New Jersey has used 5 minutes.

Mr. SANDMAN. I reserve the balance of my time and request that Mr. Brooks take up the cudgel again.

The CHAIRMAN. The gentleman from Texas is recognized.

Mr. BROOKS. Mr. Chairman, I would yield 2½ minutes to Congressman, Mr. Danielson from California.

The CHAIRMAN. The gentleman is recognized.

Mr. DANIELSON. Thank you for yielding.

Inasmuch as Mr.—my distinguished friend, Mr. Sandman, and others request specificity on many of these items I feel it is appropriate that it be provided. Within this field of the use of the Internal Revenue Service, there are other items than those mentioned by Mr. Brooks. For example, along in 1971, and 1972, Mr. John Dean, who had authority to work as liaison between the White House and the Internal Revenue Service, obtained confidential Internal Revenue information about a rather large number of people and under his direction efforts were made to have the Internal Revenue Service conduct audits on certain persons who were low on popularity within the White House. This is borne out on March 13, 1973, for example, in a conversation



within the Oval Office. The President asked Mr. Dean if he needed anything from the IRS and Dean responded that he didn't at that time. He said he now had sources in the IRS and could get whatever he needed without any further trouble.

Along in the spring of 1972, the political campaign was warming up and they thought down—John Ehrlichman and others in the White House thought it would be good to get some information on Lawrence O'Brien, who was chairman of the Democratic National Committee. They had found that in an investigation of Howard Hughes there was some information indicating a financial connection with Mr. O'Brien. So Mr. Ehrlichman, in 1972, instructed Treasury Secretary Shultz to investigate and interview O'Brien about his tax returns because the President was interested. Thereafter, because of the inquiry, the IRS did interview Mr. O'Brien and they furnished Shultz with the results of the interview. It didn't indicate anything particularly bad, so on August 29, Shultz, together with—Treasury Secretary Shultz together with Barth and Walters of the Internal Revenue Service, decided this, that we do nothing further about O'Brien. They notified Ehrlichman that they were dropping the matter, and of course, Mr. Ehrlichman strenuously objected.

But they wouldn't leave it alone at that point. A couple of days later, in early September, Mr. Ehrlichman got in touch with Herbert Kalmbach, the President's loyal personal attorney and fundraiser, and told Kalmbach to go up to Las Vegas, Nev., and plant the story with Hank Greenspun of the Las Vegas Sun, I believe it is. Kalmbach fortunately refused to do so.

The CHAIRMAN. The gentleman has used his 2½ minutes.

Mr. DANIELSON. But this is a part of the pattern of misuse of the Internal Revenue Service.

The CHAIRMAN. The gentleman from Texas.

Mr. BROOKS. Mr. Chairman, I would yield 2½ minutes to the gentleman from Illinois, Mr. Railsback.

The CHAIRMAN. The gentleman from Illinois is recognized.

Mr. RAILSBACK. I thank the gentleman for yielding. This is one of the areas that I mentioned I was concerned about in my opening statement. I want to express the feeling that I share the concern that was expressed by the gentleman from Iowa, Mr. Mayne. Let me just say that this story is what I would call both bad and good or good and bad. The story is bad in the respect that top officials of Government clearly tried to misuse their power. Good in the respect that in this particular case, contrary to many of the other aspects of the Watergate affair, there were some good people in the administration that rejected and fought against what I think was a blatant misuse of power.

The facts are these that trouble me so much and I realize that other administrations have been guilty of similar activities but certainly I don't think on the massive scale that this was attempted.

On September 11, John Dean gave 591 names to the Internal Revenue Commissioner and asked him to audit those persons returns. What is an IRS audit? What is an audit? well, to begin with, the taxpayer is asked to furnish a full and complete justification for everything used within the tax return itself. The IRS agent has access to prior returns.

An audit of civil cases can go back 3 years and in a criminal case if criminal fraud is suspected they can go back without limit, checking any and all returns filed by the taxpayers. In a typical civil case the agent must be provided by the taxpayer access to all records involving deductions, medical bills, information regarding outstanding loans, and other significant financial data. If the IRS agent suspects there has been income received and not reported he will prepare a net worth analysis and to do this he will interview friends, neighbors, associates, to determine a taxpayer's life style. Oftentimes the taxpayer will have to hire a lawyer or an accountant at an expense to him.

Many of my constituents have complained about IRS audits.

Now, the direct evidence that we have, is testimony by John Dean along these lines. This was conducted by Mr. Doar of John Dean in secret session. This list of 591 names is a group of McGovern supporters and contributors.

The CHAIRMAN. The 2½ minutes of the gentleman has expired. I recognize the gentleman from New Jersey.

Mr. SANDMAN. It is interesting to note that the gentleman from California, Mr. Danielson, has given me an opportunity to prove beyond all reasonable doubt what we have been arguing about. The specificity, it is a real word, and that is the thing that is going to be remembered here because those who have that solid 27 seek to violate it so badly.

Now, here is the whole case. Let me make an illustration of what the gentleman has said. They are willing to be specific, sure they are. Look at how specific he just was. He started out by saying on a number of occasions in 1971 and 1972 John Caulfield, a member of John Dean's staff, obtained some IRS confidential information. In any court in this land, would that kind of indefinite thing hold up? Of course it wouldn't.

Let's go down to the next one. In the spring of 1972—the spring takes in 3 months. What part of the spring? He doesn't dare tell you because he doesn't know. That is why they don't want to get specific. And in that one John Ehrlichman received some information, passed it on to someone else.

The next thing he told you, during the summer of 1972, a span of 3 more months.

Now, the 38 members here have tried more criminal cases than they ever want to remember and there isn't one can tell you that this can hold up in any court in the land. Each of these periods is 3 months. When in 3 months?

And you can go right on through the whole bit. It is just a whole conglomeration of generalities. That is why they don't want to get specific. They don't want to do this thing the right way. Never did.

Now, we have valuable time and I want to yield to my friend from California, Mr. Wiggins.

The CHAIRMAN. The gentleman from California is recognized.

Mr. WIGGINS. I thank my colleague for yielding and I will only take a moment but I do want to put in focus what my friend from Illinois has just said about this egregious act of John Dean in going to the IRS with some 500 names of political opponents of the President. That is absolutely indefensible, ladies and gentlemen, and no one at this table,

Republican or Democrat, friend or foe of Richard Nixon, condones for 1 minute that act. But, you see, the President didn't know that. He didn't know that John Dean went to the IRS and there isn't a word of testimony that he did know when Mr. Dean went. And it is important as well to know what the IRS told Mr. Dean.

The person that told Mr. Dean was the appointee of the President, executing the President's instructions, I presume, and there is no dispute as to what Mr. Dean was told, and in so many words, and if you will pardon the expression, he was told to go to hell.

Now that is what happened.

Mr. SANDMAN. Will the gentleman yield?

Mr. WIGGINS. With that the gentleman is not to be impeached. This whole case of IRS abuse turned on the conversation of September 15 and on that we will just have to submit that and we will study it, review it to decide whether or not at that time the President approved of this or whether it was simply a discussion in the context of the time 3 months before an election in this country.

I yield back that time to my friend from New Jersey.

Mr. SANDMAN. With your permission, Mr. Chairman, I yield 3 minutes to the gentleman from Indiana, Mr. Dennis.

The CHAIRMAN. The gentleman is recognized for 3 minutes.

Mr. DENNIS. Mr. Chairman, continuing the situation I think it is worth remembering that Commissioner Walters said on the occasion that Dean came to him that Dean stated that he had not been asked by the President to have this done and he did not know whether the President asked that any of this activity be undertaken. And Mr. Dean stated here in this committee in answer to Mr. Railsback, "I don't know of any audits that were accomplished," and that the Joint Committee on Internal Revenue Taxation found that, in fact, none of these people were audited. So that is the record on the situation, as to what actually took place as against a political conversation on the 15th day of September. And there is no evidence in the record anywhere that the President ever made any request except a hearsay statement by Clark Mollenhoff, who says that Haldeman told him that the President asked for a report on Governor Wallace's brother, which wouldn't stand up in any court in the land, and there is no evidence that that, in fact, is the truth and it has been denied by two or three other people during the course of the testimony.

And as Mr. Railsback said, there are good people in this. There is Secretary Shultz, there is Secretary—Commissioner Thrower, there is Commissioner Walters. All of them turned Ehrlichman's efforts and Dean's efforts down. There is no evidence of a Presidential effort and the thing that there is evidence of is that Secretary Shultz and Commissioner Walters and Commissioner Thrower were Presidential appointments of Richard M. Nixon.

I yield back to the gentleman from New Jersey.

Mr. SANDMAN. I yield 2 minutes to the gentleman from Ohio, Mr. Latta.

Mr. LATTI. Thank you for yielding. I want to reemphasize, underscore in capital letters what has been said by the gentleman from California, Mr. Wiggins, that no one at this table condones any such request that Mr. John Dean put forth, and certainly if the President

of the United States had put forth that request I would think that would be an impeachable offense.

Now, the question is did he or did he not authorize John Dean to do this? It has been pointed out when he went to Mr. Walters he specifically stated that he was not there at the President's request. I think it is important to note when this whole matter was submitted to a Joint Committee on Taxation here in the Congress which is controlled by the opposition party that they made this report: "The staff's investigation paid particular attention to the cases of those individuals mentioned in the press as victims of politically motivated audits. The joint committee staff has difficulty in discussing these cases specifically because of the problem this would present in violating the individual's rights of confidentiality."

Now, this is the place I want to emphasize. "However, in none of these cases has the staff found any evidence that the taxpayer was unfairly treated by the Internal Revenue Service because of political views or political activities."

Now, this conclusion is further supported by the House Judiciary Committee's materials, this committee's materials. Commissioner Walters stated in his affidavit of May 6, 1974, with respect to a list furnished him by Mr. Dean, "At no time did I furnish any names or names from the list to anyone or did I request any IRS employee or official to take any action with respect to the list."

The CHAIRMAN. The gentleman has consumed 2 minutes and the gentleman from New Jersey has 6 minutes remaining.

Mr. SANDMAN. I would like the gentleman from Texas to take the next time.

The CHAIRMAN. The gentleman from Texas has 11½ minutes remaining. The gentleman from Texas.

Mr. BROOKS. Mr. Chairman, I yield 5 minutes to the gentleman from Iowa, Mr. Mezvinsky.

The CHAIRMAN. The gentleman from Iowa is recognized.

Mr. MEZVINSKY. Thank you, Mr. Chairman.

Mr. Chairman, this article is the article on abuse of power. To me it really symbolizes what the drafters of the Constitution really meant had in mind when they gave us the impeachment process. They were worried when they just came out of a revolution that they would find a President that would abuse the power of the Presidency. One of the gentleman from Virginia, Mr. Randolph, said he advocated the impeachment process because he was specifically worried that if the President abused the power, it could very well lead to "insurrections" by the people.

When considering the Article on Abuse of Power, really what the committee is doing is looking at the type of presidential conduct which the Founding Fathers knew the system could not tolerate. We see now the abuse of the IRS. There wasn't any IRS when the Constitution was written, but I'm positive that abuse of this agency is the type of problem the drafters of the Constitution foresaw. I believe the reason that the gentleman from Illinois, Mr. Railsback and the gentleman from Iowa, Mr. Mayne, and many others are so concerned about this matter is the realization that the abuse of the IRS can poison the system. When the system of government is threatened, the abuse of the IRS becomes one of the most hideous of all the charges.

And why? Because we all pay taxes. We know that the IRS has personal information. We know that it is based on voluntary action, honesty and our conscientious efforts to pay our taxes. It is really selfconfession when we file our taxes. We know that and we understand it.

I think there is apprehension sets in because we realize that Richard Nixon's presidency has really leveled a serious blow to the IRS.

We have talked about the enemies list but I would add that there is another use to be discussed—a list of friends.

Now, what do we see about the friends, and why is the friends list as significant as the enemies? Because impeding the due administration of the Internal Revenue Act by issuing a directive from the White House to turn off an IRS audit is a violation of the law. It is another kind of cover-up. It means another kind of protection. And we have evidence to show that is exactly what happened.

And let me tell you, my friends, though we are involved in a constitutional issue, we know that some are groping for proof of criminal violations. Now if you decide to help your friends by stepping in on an IRS audit, that is an interference with the due administration of the Internal Revenue Code and cite this as an example; which is not only a significant abuse of office, but it is also a criminal offense, a violation of section 7212. Under that section, if you interfere with the due administration of the Internal Revenue Code is a felony and being put in prison. And I would bring that to the attention of the members of this committee.

I would also like to rate that the Joint Committee on Internal Revenue Taxation looked at this issue, and that investigation is still going on and the Joint Committee in fact, has asked for re-audits of those "friends," those on whose behalf there was direct contact we're talking about the tax affairs of some of the closest associates and friends of the White House, and we have testimony direct that, in fact, the White House was involved.

Now, let me point to one item that is very interesting to me, and that is the whole focus on September 15 discussed by the gentleman from California, whom I respect, Mr. Wiggins. No direct testimony. We have Mr. Dean just talking about it. He is talking about it supposedly in the abstract.

Well, let me say this. It is not in the abstract, it is right on target.

Let us refer to March 13, 1973, and what do we see? We see a direct involvement, direct discussion at page 50 where they are talking about issues. What does the President say directly. "Do we need any IRS stuff." That is the answer to direct involvement.

The CHAIRMAN. The time of the gentleman has expired, and the gentleman from Texas has 6½ minutes remaining, and the gentleman from New Jersey has 6 minutes remaining. And does the gentleman from New Jersey wish to be recognized?

Mr. SANDMAN. I recognize the gentleman from Mississippi, Mr. Lott, for 3 minutes.

Mr. LOTT. Thank you.

The CHAIRMAN. The gentleman is recognized.

Mr. LOTT. Thank you very much, Mr. Sandman.

Mr. Chairman, this is certainly an area that can be used to inflame the emotions of the American people, because there are many out

there that I know have personally felt that they are harrassed by the IRS and they do not feel that they are on anybody's list. But, I think there are some key issues and points that we must stress and keep in mind. There is no evidence of any such misuse in the final analysis on the part of the President.

The Joint Committee on Internal Revenue Taxation report should be noted in this conclusion, and I am going to cite some sections from that report in a minute. Also, almost all of the alleged attempts to misuse IRS come from the person that used the most influence, supposedly within our IRS to get these audits. John Dean is the person that made these points with Johnnie Walters and others.

Now, a lot has been made of this missing 17 minutes of tape. Well, the fact is, we do not have that 17 minutes and there has already been some contradictions about what is included in those 17 minutes, so I do not think we can base this decision tonight on something that we do not yet have, and maybe we will have later on, and maybe we should consider it.

But, it has been claimed that several individuals in the White House attempted to misuse the IRS for partisan political purposes. It is clear that such alleged misuse could only succeed if it were supported by the power and the authority of the President in the final analysis.

On looking on all evidence available, it is clear the President did not take that action, and one point I want to emphasize, that Mr. Dennis made a while ago, is that these people have been praised so highly, Mr. Shultz and Mr. Walters and Mr. Thrower, and these people were appointed by the President, just as these aides were, like Dean.

Now, let me quote to you some of the sections in the report from the Internal Revenue Committee. "However, in none of these cases has the staff found any evidence that the taxpayer was unfairly treated by the Internal Revenue Service because of political view or activities."

"The staff believes that in three cases there are substantial questions about decisions made by governmental agencies about friends of the White House. But, the staff does not have evidence that there was any pressure involved. The staff also believes that a number of enemies either were not audited when the staff believes they should have been or were audited too leniently."

And then in Mr. Dean's response after questioning by Mr. Railsback, he says: "So I don't know if the President got back in it or not. I don't know of any audits that were accomplished."

In conclusion, I think that the record clearly shows that while some personnel at the White House may, indeed, have used improper intentions against the IRS, the fact is in the final analysis, no IRS abuse resulted.

Thank you.

The CHAIRMAN. The gentleman from New Jersey has 3 minutes remaining.

Mr. SANDMAN. I reserve and yield to the gentleman from Texas to use some of his time.

The CHAIRMAN. The gentleman has 6½ minutes remaining.

Mr. BROOKS. I yield 6 minutes, reserving 30 seconds to myself, and 6 minutes I yield to the gentleman from Alabama, Mr. Walter Flowers.

Mr. FLOWERS. And I yield 1 minute of my time to the gentleman from Illinois, Mr. Railsback.

Mr. RAILSBACK. Thanks, Mr. Flowers.

Let me just say, let's don't delude ourselves here. There was a conversation, the President was involved. The President knew exactly what John Dean had done on September 11. Not only did he not turn it off, in my opinion, and according to John Dean's direct testimony, he told him to go back again.

Now, some people argue that because nothing was done that there is no serious offense. Why wasn't there anything done? Was it because the President of the United States decided to turn it off and register his outrage? Is it because these investigations did not occur because there happened to be two rather dedicated public servants, one by the name of George Shultz and then a rather good IRS Commissioner that would not have anything to do with it. And I think that Commissioner Walters gave very good advice to Mr. Dean when he presented this list. He testified he told Mr. Dean that compliance with such a request, and I quote: "Would be disastrous for the IRS and for the administration and would make the Watergate affair look like a Sunday School picnic."

Mr. FLOWERS. I thank the gentleman for his comment.

You know, my friends, a fundamental principle of our Government is that equal justice under law is a guarantee of every citizen. To put it another way, we are a Government of laws and not of men.

This commitment to equal justice was written down in a few places, like in our Constitution, and in our laws, and in some court decisions. But, I think just as important are some commitments to this principle that must be assumed in our society.

For instance, the assumption that the sensitive agencies of Government with peculiar power over each one of our citizens, like the police power, and the power to tax, will not be abused or misused for political purposes. This is a fundamental source of the people's confidence in our Government.

That the President and his men should have trifled with this source seems to me to be sufficiently grave to qualify as a component of an article of impeachment.

Can you imagine, the United States saying to an aide, "Do you need any IRS stuff?" Well, what happened on March 13, 1973 in the White House!

Can you imagine the President's lawyer, his counsel, his close subordinate, saying with impunity, and with apparent approval of the President, "We have a couple of sources over there that I can go to. I don't have to fool around with Johnnie Walters," who was IRS Commissioner, "we can get right in and get what we need."

That also happened in the White House.

Let me turn to some specifics which may be just the tip of the iceberg.

There was a two-pronged attack on a well-known political figure who is now the Governor of my State, and a great and courageous American, a belief which is shared equally by those who agree or disagree with him. In the spring of 1970 George Wallace was not Governor of Alabama, but engaged in a heated contest with the then-

Governor Brewer who had succeeded Governor Lurleen Wallace on her death in 1968.

The decision was made, by whom I don't know, but I think you can be certain it was in the highest councils of the White House, that the success of Governor Wallace in the Democratic Primary in the State of Alabama was somehow incompatible with the interests of the Nixon administration. So, what did they do? Well, at the specific instance of Mr. Higby primary assistant to Mr. Haldeman, Chief of Staff to the President, \$400,000 in funds left over from the 1968 Presidential campaign was funneled to Alabama in a devious and undercover manner in an unsuccessful effort to defeat Governor Wallace. There is direct evidence to this from Mr. Kalmbach before this committee in this room.

Then in early 1970, H. R. Haldeman directed a special counsel to the President to obtain a report from the IRS about the investigation of George Wallace and his brother. Haldeman gave assurances that the report was for the President. A report from IRS Commissioner Thrower was requested on this basis, received and given to Haldeman. Material contained in the material was thereafter transmitted to Jack Anderson, a syndicated columnist, by Murray Chotiner, a White House employee and personal confidant of the President. Portions of the material potentially dangerous politically to Governor Wallace were published nationally on April 13, 1970, several weeks before the primary election.

Now, both of these foregoing actions were gross abuse of the IRS as an agency of Government. And incidentally, a violation of Federal law.

Now, I ask you, my friends, who was it that maintained a political enemies list in an effort to get back at them? It was the administration of Richard Nixon.

Who was it that released potentially damaging tax information about the Governor of Alabama? The aides of Richard Nixon.

And on another subject of gross abuse, who was it that frustrated the ultimate date with justice that awaited Daniel Ellsberg and Anthony Russo, and which I trust would have come to them at the hands of a jury? Was it some left-wing radical liberal group? No, my friends, it was the administration of Richard M. Nixon.

However you describe yourself and wherever you may be, you ought to be vitally concerned here, because if this President, with whom you perhaps agree politically, can get by with the abuses described in this article, then so can succeeding Chief Executives, including those with whom you may not agree, thus imprinting in our highest office a standard of conduct that is certainly unacceptable to me.

The CHAIRMAN. The time of the gentleman has expired.

The gentleman from New Jersey has 3 minutes remaining.

Mr. SANDMAN. Well, I think now we have the whole case and if we could rest all of it on this one, this lawyer would have asked for a directed verdict because these are the facts and now you know why they will not be specific. All they have are generalities, groups of dates and each one include about 3 months. All they have is in 1970 Haldeman told Mollenhof. All they have is over here sometime in 1971 and 1972 Caulfield did something that Dean told him to do. All they have is in the spring of 1972 Ehrlichman told someone else something.



The only thing left is that magic date, September 15, 1972. Why don't you say that is all you have? Why don't you let this count rest on that date, because you know you cannot hold up.

That is why you don't do it and here is why it would not hold up.

All you have is a conversation which anybody that listens to that tape can tell why and how it was arrived at. Mr. Railsback now has brought something new and this is a majestic case to say the least.

Modern times has done away with the fifth amendment. We heard that a day or so ago. And what did Mr. Railsback just say? Do you know what he said? Nothing happened, not one of the five—591 people were audited. Not one of them. But, you have got to look past that.

Impeach the President of the United States for a thought, not a deed? That is what he is saying.

When did that happen before? And what kind of law is this going to make for every man that sits in the White House from now on? This is what I am concerned about. This can be a stage show from now on for any majority party to manipulate against any man that becomes President of the United States that is not a member of his party, and such actions as that cannot be in the best interest of the Government and the country we all love so well.

This is the thought we have to prove to 220 million people. This shows beyond all reasonable doubt you cannot prove this count. You know it and the people know it, and why don't you pass this motion to strike?

The CHAIRMAN. The time of the gentleman has expired.

The gentleman from Texas has 30 seconds remaining.

Mr. BROOKS. Mr. Chairman, with 30 seconds remaining I would yield 15 of that or half of that to my distinguished friend from New York, Mr. Fish.

Mr. FISH. I thank the gentleman.

I would just like to say that I know most people listening to us know really what is the fact here, that to faithfully execute the laws of our country does involve policing your lieutenants, and does involve an obligation to stop them when you see the course which they are following. And for those who are looking for the smoking pistol, I am just afraid they are not going to find it because the room is too full of smoke.

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. The gentleman from Texas.

Mr. BROOKS. I have been much impressed by the debate and the comments of my colleagues on this committee. I think we have all benefited from it, and I would withdraw the motion to strike.

The CHAIRMAN. Under the Rules of the House, the gentleman has a right to withdraw the motion to strike.

Mr. BROOKS. Thank you, Mr. Chairman.

Mr. SANDMAN. Mr. Chairman, a point of parliamentary procedure. Doesn't he need unanimous consent to do that?

Mr. BROOKS. I would be pleased to answer that.

The CHAIRMAN. The Chair will respond. The Chair will respond.

If the gentleman wants, the Chair will cite the rule, and rule 19 of the Rules of the House, if the gentleman was operating under the House as a Committee of the Whole, he is entitled to withdraw the

motion as a substitute amendment without even asking for unanimous consent.

So, the gentleman is perfectly in order.

There being no further amendments before the desk, the gentlemen are now recognized, those who so wish, to speak under the 5-minute rule to the substitute amendment that was offered by the gentleman from Missouri, Mr. Hungate.

Mr. RAILSBACK. Mr. Chairman?

The CHAIRMAN. The gentleman from Illinois is recognized for 5 minutes.

Mr. RAILSBACK. Mr. Chairman, if nobody wants to take the time for the general debate I would move the previous question.

Mr. DENNIS. Wait a minute.

Mr. RAILSBACK. That's what I am asking.

The CHAIRMAN. Will the gentleman—

Mr. RAILSBACK. I withdraw.

The CHAIRMAN. The Chair would like to state that under the rule adopted that every member has a right to the 5 minutes unless he declines to use it.

Mr. HUNGATE. Mr. Chairman, Mr. Chairman?

The CHAIRMAN. The gentleman from Missouri, Mr. Hungate.

Mr. HUNGATE. I thank the Chair.

Mr. Chairman, the late President Truman was mentioned along with the late Drew Pearson. Of course Truman does not need any defense from me. He was known to handle people who made attacks on him by saying some of them were prismatic prevaricators, liars any way you looked at them.

But, it is not appropriate I think to be critical of those who are deceased and we do know that Mr. Truman opposed passing the buck. He was almost as opposed to passing the buck as Nixon is good at it. On Mr. Truman's desk there was a sign in the Oval Office that said: "The buck stops here."

Now, we have had the other criticism of other Presidents who are deceased. President Lyndon Johnson. We have had discussions of the fifth amendment, and I am not going to tell you that I can tell you all about the fifth amendment and due process. But I think it is awfully hard to give due process to a dead man.

So, I would hope that when the final record is written we would strike any attempt to make attacks of that kind and I would certainly say that I would resist any that might be made with regard to President Eisenhower. We were in the Army together. I can only quote the words of our distinguished former colleague, Brooks Hays of Arkansas, Mr. Thornton's State, who recounted the story of some boys in the Ozarks playing cards and one of them looked over at the others and said, "Come on boys, play the cards fair. I know what I dealt you."

So, Mr. Chairman—

Mr. DENNIS. Would the gentleman yield?

Mr. HUNGATE. I will yield to my distinguished and learned colleague from Indiana.

Mr. DENNIS. I would just like to say to my good friend from Missouri that I really intended no criticism of President Truman who happens to be a gentleman that I admire myself, and if he did check

into Drew Pearson, I would come close to thinking that that might almost have been justified.

Mr. HUNGATE. I thank the gentleman for his comment and I know that as a distinguished trial attorney he would do nothing except what is proper.

We have talked about people, and agents, and servants and employees and I would like to in just my brief time talk some about Mr. Butterfield's testimony. I thought he was good. He was one of our better witnesses. He has not been indicted.

Now, he said in some of his testimony, after qualifying how much time he spent in the White House from his first day and that is as early as you can get sworn in and he is right up there next to the Oval Office and goes through some of this, then he talks about Mr. Haldeman: "Now, Mr. Haldeman, in addition to being the Chief of the White House Staff was in charge of everything other than the domestic international trade, congressional and national security. He was in charge of everything that had a personal connotation, the speech writing, the appointments, the President's travel schedule, the liaison with outside groups, political matters by and large, personal matters, communications with the media, et cetera."

And then he says "I could go on now and elaborate a bit on the Haldeman staff. That is the staff I know best. That is the staff which was the biggest and had most of the people on it. But if a crunch matter came up, of course, they checked with Haldeman.

Larry Higby was Bob Haldeman's alter ego. Larry Higby was to Haldeman what Haldeman was to the President."

Then he goes on about Higby and Gordon Strachan and his responsibilities. He says that "he was responsible for keeping attuned to the political happenings around the country, and had a very close liaison to the Committee to Re-Elect."

Then continuing in our testimony on page 29, he testifies:

The President, first of all, is well organized always and highly disciplined as an individual. The whole staff reflected that. The staff was a very, very well organized, firmly run staff.

Mr. DOAR. Could you give to the committee an indication of the President's work habits with respect to attention to detail? As you knew it?

Mr. BUTTERFIELD. Yes; from my observations, from my having seen thousands and thousands of memoranda over this period of time—I may be using these figures loosely—hundreds and hundreds of memoranda over this period of time, from working directly with the President and Haldeman, I know him to be a detail man.

Then he goes on:

The President often, of course, was concerned whether or not the curtains were closed or open, the arrangement of State gifts, whether they should be on that side of the room or this side of the room, displayed on a weekly basis or a monthly or daily basis.

Social functions were always reviewed by him, the scenario, after they came to me from Mrs. Nixon. Each was always interested in the table arrangements. He debated whether we should have a U-shaped table or round table.

He was deeply involved in the entertainment business, whom we should get for what kind of a group, small band, big band, black band, white band, jazz band, whatever. He was very interested in meals and how they were served and the time of the waiters and was usually put out if a State dinner was not taken care of in less than an hour or an hour's time.

He debated receiving lines and whether or not he should have a receiving line prior to the entertainment for those relatively junior people in the administration who were invited to the entertainment portion of the dinners only and not to the main dinner.

The CHAIRMAN. The time of the gentleman has expired.

Mr. SEIBERLING. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. Did Mr. Dennis seek recognition?

Mr. DENNIS. Mr. Chairman, I will seek recognition, sure.

The CHAIRMAN. Mr. Dennis.

Mr. DENNIS. Mr. Chairman, and my colleagues on the committee, I think this article, if proof were here, would be more important in many respects than article I that we dealt with earlier. But, the difficulty as I see it is that whereas on article I you had a difficult matter of balancing proof and deciding where the weight lay and whether a case had been made beyond a reasonable type of a doubt, and I decided it had not been, but while you have that kind of a problem there, here we might have a serious case if you had the evidence, you don't really have the evidence.

And I cannot believe that we are going to impeach the President of the United States without the facts.

Now, it is difficult to go over the same ground, but let us just look quickly at what we are talking about.

First is the IRS. I was just talking about that a moment ago. The Japanese had an offense in the old days that they called dangerous thinking, and maybe on the basis of the conversation of September 15 you could convict somebody of that if it were an offense in this country. I do not think it is.

A bunch of politicians get around after an election or before an election and are talking about the opposition. What they are going to do to them and I don't think that it is a very high-class conversation, but I do suggest that that conversation in itself is not an impeachable offense. You've got to show that something was done as a result of it and done by the President or by his instructions.

Now, there is not any evidence. We have a hearsay statement about the Wallace matter. That is all. We have the enemies list and Dean himself said that was not done at the President's request and he agrees that he never followed up on it. And as far as he knows, nobody ever followed up on it. And the Joint Committee says that nobody was ever audited as a result.

My friend from Iowa, Mr. Mezvinsky, talks about overfriendliness to someone. He didn't specify anybody, but one case that I remember was alleged was the case of John Wayne and that was checked into and nothing was found to exist at all. It was treated just like everybody else. And the Joint Committee has looked into this thing and said that in none of these cases was the taxpayer improperly treated because of political considerations.

Now, my friend from Alabama, Mr. Flowers, says it is a terrible thing to have a statement in the White House "do you need any IRS stuff." Well, again, maybe it is not the kind of statement you would like to hear, considering all of the circumstances and what not, but is that an impeachable offense? That is what we are talking about here.

Nobody shows that anybody went and got any IRS stuff and used it for any improper situation.

Mr. McCLORY. Would the gentleman yield for a question?

Mr. DENNIS. I hate to yield because of the length of my time. Otherwise I would be happy to.

Mr. McCLORY. I would just like to say——

Mr. DENNIS. Well, I yield to my friend from Illinois since he is going to talk anyway. I will be glad to yield to him.

Mr. McCLORY. Well, thank you very much. I just want to say don't you think that it is really genuinely fortunate that we had Commissioner Walters and that we had Secretary of the Treasury Shultz who decided that they just would not tolerate any such business as that, even though some close to the President wanted to misuse the IRS?

Mr. DENNIS. I completely agree with my friend. As I said before, they were appointees of the President, and I think that he is entitled a great credit for having that kind of people as his main appointees. He appointed them, and none of them have said anything in the evidence before us in this record to indicate that they feel that the President ever pushed them.

The President himself, so far as I am aware. Now, I am going to the second matter, the matter of the surveillance. We talked about that already, too. You have to consider the climate, the leaks about Cambodia, and the bombing, about troop withdrawal, about SALT. I think personally——

The CHAIRMAN. The time of the gentleman from Indiana has expired.

Mr. SANDMAN. Mr. Chairman, may I make a parliamentary inquiry, please?

The CHAIRMAN. The gentleman from New Jersey has asked for a parliamentary inquiry.

Mr. SANDMAN. Mr. Chairman, would it not be in order at this time since one from each side has spoken, for a member to move that all debate on this article terminate within 1 hour so that the time can be equally divided?

The CHAIRMAN. Well, under the rule the members who wish to speak have that time reserved to them, and unless there were unanimous consent, then I do not believe that such a motion would be in order.

Mr. SANDMAN. Could I ask for unanimous consent that all debate on article II end at 10 minutes after 10, which is 1 hour?

The CHAIRMAN. Is there objection?

Mr. SEIBERLING. Reserving the right to object, Mr. Chairman, could we have some indication as to how many members intend to speak so that we have some idea of how much time will be allotted?

The CHAIRMAN. A total of 20 members—21 members seek recognition.

Mr. SEIBERLING. Well, Mr. Chairman, it seems to me that this is a matter of sufficient importance so that the members should have an adequate amount of time. I don't want to prolong this, but I don't think we should cut off debate on a matter of this seriousness, and therefore I must register my objection to the request.

The CHAIRMAN. Objection is heard. The gentleman from California, Mr. Edwards——

Mr. EDWARDS. Mr. Chairman?

The CHAIRMAN [continuing]. Is recognized for 5 minutes.

Mr. EDWARDS. Mr. Chairman, I would like to speak just for a few minutes about all of article II, which I suggest is an expression of our deep devotion to the Constitution, and above all, to the first 10 amendments, known as the Bill of Rights.

Article II is our rededication to and our reaffirmation of the Bill of Rights and the principle that no officer of our Government from the most lowly to the highest can violate with impunity those fundamental constitutional rights guaranteed every American citizen.

In 1787 when the 13 Colonies were considering ratification of the new Constitution, three of the new States voted to ratify only on condition that a recommendation for a Bill of Rights be added. These men remembered well that they or their parents had fled from the kingdoms of Europe to seek individual freedom in the New World. They had just finished winning a war to insure this independence and freedom, and they were not about to substitute a new Federal Government for the old tyranny without safeguards designed to protect their rights as individual human beings from the arbitrary encroachments of the new Government. So it was that the First Congress of 1789 enacted the Bill of Rights as the first 10 amendments to the Constitution.

Jefferson in a letter to Madison urged the adoption and said, "Let me add that a Bill of Rights is what the people are entitled to against any government on earth."

Why do I review this history this late at night in the consideration of article II? It is, of course, because article II charges President Nixon with intentional violations of the Constitution, chiefly amendments one, four, five, and six.

The first amendment guarantees freedom of speech and of the press. In direct contravention of this amendment, President Nixon authorized or permitted illegal wiretapping and other surveillance of individuals, including reporters, and the use of this information so gained for political reprisals and defamation.

The fourth amendment guarantees the rights of people to be secure in their homes, their houses, their papers, against unreasonable searches and seizures. In direct contravention of this amendment, President Nixon established a special investigative unit within the White House to engage in searches and seizures without legal warrant, and the special White House unit committed a burglary in the State of California.

The fifth amendment guarantees to all equal protection of the laws. In direct contravention of this amendment, President Nixon endeavored to use the Internal Revenue Service for tax investigations and tax harassment of political opponents.

The fifth and sixth amendments guarantee a fair trial in all criminal prosecutions. In direct contravention of these amendments, President Nixon and his subordinates leaked information unfavorable to a criminal defendant, withheld information necessary for his defense, and during the trial even offered the judge a high Government position.

No proposition could be more profoundly subversive of the Constitution than the notion that any public official, the President or a policeman, possesses a kind of inherent power to set the Constitution aside whenever he thinks the public interest, or to use the more popular term now given such easy currency, the "national security" warrants it.

That notion is the essential postulate of tyranny. It is indeed the very definition of dictatorship, for dictatorship is simply a system under which one man is empowered to do whatever he deems needful for the whole community.

We look now beyond the walls of this committee room to every citizen, rich or poor, white or black, brown or yellow, from the most

powerful to the humblest, and say to all who will listen, this article II is the only meaningful way to protect your constitutional rights, your right to speak what is in your mind without fear of reprisal or other harassment and your right to hear and read what others would say to you; your right to be secure in your home and your office against Government wiretappings and burglaries; and your right to equal treatment under law without fear or favor from the Government; your right, if legal difficulties should enmesh you, to a fair trial; your right to be left alone to pursue life, liberty and happiness free from unlawful incursions at all levels of government from the President down.

Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from California is recognized for 5 minutes.

Mr. WIGGINS. Mr. Chairman, I thank you for yielding.

It had been my intention, Mr. Chairman, to use my 5 minutes to discuss the historical meaning of the "take care" clause because I think frankly this committee has not shown the degree of scholarship that the House has the right to expect from us with respect to that clause and its probable misapplication to article II. But I will reserve that to a later time and probably will include it in the report when we go to the House.

I want to take this moment to just lay out a few facts because charges are easily made and now we have to take the time to shoot them down even though they are really without substance.

It has been said that President Nixon attempted to subvert the processes of justice by somehow improperly interfering with a Federal judge. We know we are talking about the Matt Byrne incident and the Ellsberg trial out in California.

Let me tell you what happened. It is a relatively short story.

Everybody knows that the nomination of Pat Gray was in trouble and the President was going to have to nominate a new director for the FBI. The President sought the advice of his Attorney General as to whom that nominee ought to be and the Attorney General suggested two names. He suggested Matt Byrne, a judge in California, and he suggested Henry Petersen. Given that, Mr. Ehrlichman, who was acting as the President's agent, sought to inquire whether or not Judge Byrne was interested, and this is what he said to Judge Byrne:

"Judge," he said, "I have been asked by the President to call you. I have been asked to discuss with you a Federal appointment which is not judicial in character. I do not know whether this is an appropriate time for us to have a conversation like this because I do not know what the present situation in your trial is."

Given that, Judge Byrne said, "I see no reason why we couldn't talk right away."

Thereafter they met. They met down at San Clemente and they walked out on the bluff, away from the office complex in San Clemente, and Ehrlichman said to the judge as follows:

I am sensitive to the fact that you are now trying an important lawsuit. I propose that we walk out toward the bluff from this office. If at any point a subject arises that you feel in any way impinges upon your ability to fairly try the case, you just turn around and walk away from me, and as I said before, this is not something that needs to be discussed right now. We can talk about it later.

And the judge said, "Fine. Let's proceed on that basis."

Then they walked out on the bluff and an offer was made to be Director of the FBI. Judge Byrne saw no impropriety in that. He didn't report instantly to the Judiciary Committee as a result of that conversation. The President came out during the conversation and he said as follows: "I have not been following your case very closely. It appears that it may take as long to get the case tried as it took me to end the war in Vietnam," and that is all he said.

Now, that is all he said.

These sweeping statements that the President was trying to prejudice a trial are unsupported by that sort of record and we ought to be more careful in our language. That allegation, at least, ladies and gentlemen, has no substance to it whatsoever.

I yield—whatever I have got, I yield to my friend.

The CHAIRMAN. The gentleman has 1 minute and 15 seconds.

Mr. WIGGINS. I yield that to my friend from Indiana.

The CHAIRMAN. The gentleman from Indiana.

Mr. DENNIS. I may just say in the short time remaining that I think we ought to keep in mind—I could go over the surveillance again, the Plumbers again. Is it suggested that there is a law broken because of the creation of the Plumbers? No one has told me what the law was.

Is it suggested that because a unit is created and set up to take legal—to do certain things that you are thereby automatically responsible if it takes illegal action? It is perfectly obvious that the President knew nothing about the break-in out in California because of his remarks when it came to his attention.

It is perfectly obvious he knew nothing about it and he said again in the record, I told all these fellows to obey the law and there isn't any evidence to the contrary.

We have talked before about impeding the investigation. That came under article I and I said then and I say now that it is a debatable question whether he legitimately felt that there might be a CIA involvement or didn't legitimately feel it, but the burden of proof is on the prosecution.

And finally, what we need to remember is we are not accusing the President because of his general moral character or whether he is moral or amoral or what our personal opinion of him may be. We have got to find evidence or proof of a high crime or misdemeanor and if we try to impeach him for anything else, then we are not doing our duty and we are violating our oath and our conscience.

The CHAIRMAN. The time of the gentleman has expired. The gentleman from Wisconsin, Mr. Kastenmeier.

Mr. KASTENMEIER. Mr. Chairman, I am not seeking recognition at this time.

The CHAIRMAN. The gentleman from New Jersey, Mr. Sandman, sought recognition?

Mr. SANDMAN. I don't seek recognition at this time. I would like to at another time, Mr. Chairman, but not at this time.

The CHAIRMAN. The gentleman from—the gentleman from Pennsylvania, Mr. Eilberg.

Mr. EILBERG. Mr. Chairman, I would like to say a few words concerning paragraph 2. I think the subject perhaps is not completely covered.



I think all the members of the committee agree now that the President did authorize the taps. In addition to that I refer to a letter which the President wrote on July 12 to Senator Fulbright, chairman of the Committee on Foreign Relations, in which he says, "I ordered the use of the most effective investigative procedures possible, including wiretaps. I personally directed the surveillance including wire-tapping of certain specific individuals."

No question that the President assumes that responsibility.

Yet, it wasn't always that way. A little over a year ago, in February 1973, the White House learned of the forthcoming Time Magazine story disclosing the existence of wiretaps on White House employees and newsmen. John Dean, who had learned of the files from Mardian, investigated the Time story by contacting Assistant FBI Director Mark Felt, Sullivan and Mardian. Each confirmed the existence of the wiretaps and Mardian said that he had delivered the files to Ehrlichman. Ehrlichman told Dean that he had the files but directed Dean to have press secretary Ronald Ziegler deny the story.

The Time article, published on February 26, stated that a "White House spokesman" had denied that anyone at the White House had authorized or approved any taps on White House employees or newsmen. On February 28, Dean reported to the President on the Time story and his meeting with Sullivan about the wiretaps. Dean told the President that the White House was "stonewalling totally" on the wiretap story and the President replied: "Oh, absolutely."; to which I say, how interesting.

Now, Mr. Chairman, I am one of those who believe that the standard involved for impeachment does not involve criminality. Nevertheless, I find in this paragraph many evidences of criminality on the part of the President and his men and I would just like to refer to a few of them.

In 1969, General Alexander Haig ordered the FBI "on the highest authority," not to maintain records of the wiretaps initiated under the President's 1969 authorization. This information is contained in a memo from William Sullivan, Assistant Director of the FBI.

Yet the general recordkeeping statutes (44 United States Code) set standards for recordkeeping, identifying what records must be maintained and provide rules for the orderly disposal of these records. Section 3105 specifically requires all Government employees to be familiar with the fact that records cannot be alienated or destroyed except in the specific manner described in title 4 of the United States Code.

Additionally, special provision for the FBI was made in title 28 of the United States Code, section 534, directing the FBI to preserve its records except where dissemination to other law enforcement agencies is authorized by law. It is also a felony (18 U.S.C. 2071) punishable by fine and/or imprisonment to "willfully and unlawful" conceal remove, mutilate, obliterate or destroy, or attempt to do so, or with intent to do so, take and carry away any record, proceeding, map, book, paper, documents, or other thing, filed or deposited in any public office, or with any public officer of the United States.

It must be assumed that Haig knew it was illegal for the FBI not to maintain records for these wiretaps and it must be assumed that the only two men who could order him to give such directions to the

FBI, Dr. Henry Kissinger, head of the National Security Council and the President of the United States, also knew that this was illegal.

In July 1971, William Sullivan informed Robert Mardian, head of the Justice Department's Internal Security Division, that there were files and logs in these wiretaps and that he was afraid that J. Edgar Hoover would use them as blackmail against the President in order to keep Nixon from removing him from the top job at the FBI.

After conversations with then Attorney General John Mitchell, and White House officials, Mardian flew to San Clemente to discuss the existence of these records personally with the President and John Ehrlichman. During these conversations the President ordered Mardian to get the files from Sullivan and to bring them to the White House.

This order is a violation of the recordkeeping statutes in title 44.

Mardian got the files involved and delivered them to the Oval Office in the White House.

When he was interviewed about this episode by the FBI, Mardian was asked:

"Did you give the bag to Mr. Nixon, the President of the United States?"

And Mardian replied: "I cannot answer that question."

It must be assumed that he was protecting the President at this point because if he in fact gave them to a third party, he would be shielding that person leaving the inference that the President had received them.

Ehrlichman has testified that following delivery by Mardian, the President ordered him, Ehrlichman, to pick up the documents in the Oval Office and that he kept them in his own office until April 30, 1973, when they were removed and placed in the files with other Presidential papers.

The effect of the President's orders in this matter was again a violation of the pertinent sections of title 44.

Mr. Chairman, I submit that this paragraph is a very strong paragraph, very important charge in the impeachment of the President of the United States.

The CHAIRMAN. The time of the gentleman has expired.

I recognize the gentleman from Illinois, Mr. Railsback.

Mr. McCLORY. Will the gentleman yield to me?

Mr. RAILSBACK. Yes; I will be happy to yield, Mr. Chairman, 2½ minutes to my colleague from Illinois.

The CHAIRMAN. The gentleman is recognized for 2½ minutes.

Mr. McCLORY. Thank you, Mr. Chairman. Thank you, Mr. Railsback.

I certainly want to agree with the views expressed by some of my colleagues that the original intent of the special unit or the Plumbers was to try to seal up leaks but I also would like to call attention to the fact that in July 1971, just a few weeks after the Plumbers were set up, the break-in of Dr. Fielding's office was recognized by the President and Mr. Ehrlichman in his personal notes made while in conference with the President, that there wasn't any espionage or national security question involved at all.

And this effort to draw in the CIA and the FBI were resisted, of course, by the head of the CIA and the head of the FBI.

You know, some years later, as a matter of fact, in April 1973 when Henry Petersen in charge of the Criminal Investigation, the Department of Justice was investigating the whole subject of Watergate and the coverup, he brought to the President's attention this Dr. Fielding's office break-in, the President in the taped conversation that we had here before the committee said to Henry Petersen: "I know all about that. That is national security."

You see, the real facts are that while the Plumbers may have started out as a legitimate, valid organization, it was soon converted by Hunt and Liddy and Ehrlichman and the whole group there into something quite different, and something that the President knew about; and it was wrong, and it seems to me that that is why this belongs in this part of our impeachment proceedings, why it is appropriately put in article II which relates to the question as to whether or not the President was indeed taking care to see to faithful execution of the laws, and that is why I think it is appropriately there as well as some of the other paragraphs that we have which question whether the President was fulfilling his obligation, and it is something that we should send to the House of Representatives to have considered there.

In my opinion, there is clear and convincing evidence with respect to each of these paragraphs, that these actions were wrong. And I am hopeful that this article will be supported.

I thank the gentleman for yielding.

Mr. RAILSBACK. Mr. Chairman, Mr. Wiggins has asked for about 30 seconds because he thinks there was an error made by Mr. McClory.

The CHAIRMAN. The gentleman is recognized.

Mr. WIGGINS. I don't think the record should remain. I am sure it was an unintentional mistake. The Fielding break-in occurred in September 1971. It did not occur prior to that. There is not a word in the Ehrlichman notes of July 1971 indicating prior knowledge of any break-in in Ellsberg's office.

Mr. McCLORY. No. While— No. It was not the Ellsberg break-in in July 1971. The Ellsberg's theft was regarded as not being a question involving national security. If I said break-in, I didn't mean that. It was the publication of the Pentagon Papers.

Mr. RAILSBACK. Mr. Chairman, if I have any remaining time, I would like to yield it to the gentleman from Maine, Mr. Cohen.

The CHAIRMAN. The gentleman has 1 minute and 50 seconds remaining.

Mr. COHEN. Mr. Chairman, could I inquire as to whether that time could be yielded to me when I seek my own 5 minutes?

The CHAIRMAN. The gentleman has 1 minutes and 50 seconds remaining of the gentleman from Illinois' time and he has the time if he so desires, 5 minutes.

Mr. COHEN. Can I take them consecutively?

The CHAIRMAN. Without objection.

Mr. COHEN. Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman has 6 minutes and 50 seconds.

Mr. COHEN. Thank you.

There is a word that has been used here for the past 2 days and I am constrained to call upon myself to repeat it—amazing. Isn't it amazing? And I find it amazing that the fine lawyers on this committee have somehow overlooked the concept of an attempted wrong act.

All we have heard about the IRS is, well, what happened? It wasn't accomplished. It failed. It reminds me something of the words we have seen in the transcripts—a dry hole.

I would like to direct a couple of questions to the staff now and ask you about the criminal penalties involved under this section. I assume it is a crime for anyone, any officer, or employee of the United States, to breach the confidentiality of the income tax returns of the citizens of this country and I further assume that, under title 18, the President and his subordinates fall within the definition of an employee of the U.S. Government.

Is that correct, Mr. Jenner?

Mr. JENNER. Congressman Cohen, section 7212 of the Criminal Code provides expressly that attempts to interfere, attempts to obtain information with respect to income and IRS materials shall be fined not more than \$5,000 or imprisoned not more than 3 years, and then is supplemented by section 7213 which makes it unlawful for any officer or employee of the United States to divulge any of the contents of an income tax return and be fined \$1,000 or imprisoned not more than 1 year and if the offense be by an officer or employee of the United States, he shall be dismissed from office or discharged from employment.

Mr. COHEN. Shall be dismissed from office or discharged from employment—

Mr. DENNIS. Would the gentleman yield?

Mr. COHEN. Not yet, and I assume for purposes of this section, we are talking about those who attempt to use this information for improper purposes and specifically refers to—to attempts, does it not?

Am I correct, Mr. Jenner, that it is not necessary to have a specific act carried out as such, the actual accomplishment of the act?

Would it be sufficient, for example, if the President were to direct or ask or inquire of John Dean to obtain certain information, would not the act itself or the intent come from the direction to Mr. Dean as a matter of law?

Mr. JENNER. The direction would be an attempt.

Mr. COHEN. And it would not be necessary to have the particular direction completed in order to be a violation, would it?

Mr. JENNER. That is correct.

Mr. COHEN. Thank you. I would also like to direct some comments to statements made by the gentleman from California. I found those statements were also rather amazing because on the one hand, where the gentleman from California pointed out that Henry Petersen recommended Matt Byrne as FBI Director, in response to a question that I asked Mr. Petersen during our questioning of witnesses, I asked him whether or not he felt that Matt Byrne should be contacted while he was sitting as a judge on the Ellsberg matter, to which he replied, "No."

Even though he made a personal recommendation, he specifically indicated that Matt Byrne should not be contacted during the course of that trial. And the answer is quite clear as to why not, and I asked him why not, and he said—in response to my question, wouldn't this be grounds for a mistrial—he said, "some of us felt that it would."

I think as a matter of law that there would be a mistrial declared upon such a disclosure. I think that the act in contacting a presiding judge on a case of that magnitude, and I find it a little bit amazing once again for Mr. Ehrlichman to say that he didn't know what the present situation was in the Ellsberg matter, this was the major case of the decade prior to our deliberations on Watergate, if you will just go back a few years. But he didn't happen to know what was going on at that time and there was no impropriety in the conversation. I happen to feel that the position of a judge is one of the most delicate in our entire system because he has to retain an absolute and scrupulous neutrality and that neutrality is destroyed as a matter of law in my opinion when the Chief Executive, through his subordinate or subordinates, offers a position of an FBI directorship to the judge. And I suggest to you that if the counsel for the defendant or the defendant himself in such a case offered the presiding judge or even a juror a job with his firm upon the completion of the case, that man would be held in contempt, or would be in jail.

I just simply want to conclude my own remarks in this regard and I know what the gentleman from California will say, that this might preclude any Federal judge from ever achieving a higher position, but I only call the gentleman's attention to the manner in which this was carried out. There was never any publication of it. There was never any nomination or word leaked out that there was—they were considering the judge. As a matter of fact, it was covertly carried out, a second meeting in a park near San Clemente. But it seems to me that of all of the allegations we have been dealing with, the Internal Revenue Service, the FBI, investigation of Daniel Schorr, the fabricated statements about what would happen, we would hire Mr. Schorr as consultant to the White House, it seems to me what we are really saying here is that all of these activities raise the faint specter of an American Gulag Archipelago. When the Chief Executive of the country starts to investigate private citizens who criticize his policies or authorize his subordinates to do such things, then I think the rattle of the chains that would bind up our constitutional freedoms can be heard and it is against this rattle that we should awake and say no.

Now I yield to the gentleman from California.

Mr. WIGGINS. I only wish to comment with respect to your theory that a mistrial was appropriate by reason of the contact with Judge Byrne, well, let me just tell you that Judge Byrne was a participant in that contact and he doesn't agree with you. He did declare a mistrial and he should know; quite the contrary.

Mr. COHEN. He didn't think anything was improper.

Mr. WIGGINS. The judge disagreed with you.

The CHAIRMAN. The time of the gentleman from Maine has expired. The gentleman from Texas, Mr. Brooks, is recognized.

Mr. BROOKS. Mr. Chairman, there can be no satisfaction in impeaching a President of the United States, but it is essential to remove from our body politic any President whose actions threaten to destroy our system. The checks and balance system incorporated in our Constitution places this responsibility on the Congress. And the future strength of our democratic form of government requires us to exercise this power at this time.

Under Mr. Nixon, the Constitution and the laws of the United States have been so abused, so distorted, so ignored, and so converted to personal use that continued respect and support for our system of law and equality before that law demands that he who has so abused this process be removed from office. We must demonstrate to future generations of Americans that no man, even be he President, can put himself above the law.

Now, Mr. Chairman, many people voted for Richard Nixon in the last election. Most Republicans, and a lot of Democrats. I did not. But those who did had no way of knowing that the man in whom they had placed their trust would so abuse it. No one who voted for Richard Nixon need be ashamed of that vote for no one could have known what was happening or what was to occur.

We have been disappointed in him and I know that the vast majority of people who supported him do not condone the way he abused that power. Mr. Chairman, to permit such behavior to go unanswered can only have the effect of destroying the American people's faith in our constitutional form of government.

I yield the balance of my time.

The CHAIRMAN. The gentleman from New York, Mr. Fish, is recognized.

Mr. FISH. Thank you, Mr. Chairman.

Mr. Chairman, in the way article I concerned obstruction of justice, article II as I understand it is based on abuses of power or expressed in the negative the constitutional duty to take care that the laws are faithfully executed. We heard quite a lot of discourse on this subject this morning and frankly I found it to be quite legalistic.

Now, obviously to take care that the laws are faithfully executed as a mandate to the President doesn't mean that he personally executes all the laws. Well, what does it mean? I can't help but believe that this constitutional requirement is plain and understandable.

Now, I would like to pose some suggestions, some questions to you, Mr. Jenner, to see if we can't work out in everyday language just what this constitutional responsibility upon which this article rests means.

Would you say that included in this responsibility is the duty on the President not to mislead his subordinates, not to put in motion a course of action by perhaps some loose language such as to order something be done indicating you don't care how it is to be done?

Mr. JENNER. Yes, sir, Mr. Congressman.

Mr. FISH. Would you say that in addition there is a duty incumbent on the President to police his lieutenants, to see that they are operating within proper bounds?

Mr. JENNER. I think that is inherent in the clause.

Mr. FISH. Would you further say that the President would have a duty to be alert to what is going on, such a duty as President Nixon manifests in his daily careful reading summary of the news that was brought to him?

Mr. JENNER. I think that is a clear thrust of the clause.

Mr. FISH. And finally, and maybe not finally, if you care to add more, but there is a fourth thought I will put forward, that the President would have a duty to find out what is going on in those agencies of Government set up by the Congress and the people such as the Department of Justice, the FBI, and the CIA, and furthermore, a duty

to disclose to them any information that he has knowing of their interest in that information?

Mr. JENNER. I will ask—the last, Mr. Fish, is quite clear and inherent in the duty to take care. The first that you mentioned is likewise included in the President's obligation to learn what is happening with—at least in the executive agencies and the executive institutions. You will recall that there was a good deal of testimony with respect to the President's carefully screening the news summaries he received at his desk at 8:10 every morning when he was in Washington and they were delivered to him when he was in San Clemente and in Key Biscayne according to the testimony. And that he read those and he wrote notes on them, and those news reports necessarily, because they covered TV, the print media, magazines, were necessarily distilled by experts that he had there, would bring to him what was occurring day to day throughout the country and alert him to—alert him to things about which he should inquire with respect to executive agencies and his staff as well.

Mr. FISH. Can you think of anything else in addition to these four that would constitute the responsibility to take care that the laws are faithfully executed?

Mr. JENNER. The main one I think is an obligation on the part of the President and an expectation of the people with respect to the President, is that he would police his immediate subordinates, not only with respect to direct directions that he had given to them but his chief of staff and others as to whether those directions had been carried out.

Mr. FISH. I thank you.

Mr. DENNIS. Will the gentleman yield to me?

Mr. FISH. Yes, I will be glad to.

Mr. DENNIS. I thank my friend from New York for yielding. I simply want to comment first that I don't understand that a piece of conversation to the effect that things are going to change which was what happened on September 15 is in any sense of the word an attempt. If John Dean is concerned I think he would be in serious danger about an attempt but I don't think the President would. Second—

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. DENNIS. I thank you.

The CHAIRMAN. The gentleman from California, Mr. Waldie, is recognized.

Mr. WALDIE. Mr. Chairman, the past few days I think have been enormously important days for the Constitution of the United States. Whatever the ultimate result of these proceedings, whether the President be impeached or whether he be not impeached, the Constitution has been strengthened and it has peculiarly been strengthened by commencing the process of bringing into check an executive, a President, who had abused his constitutionally limited powers to an extraordinary degree.

Article II of these proposed articles of impeachment is in my view the heart of this process. By passage and adoption of this article, we not only tell this President we will no longer tolerate his personal excesses of power but indeed we tell any future President that the Constitution is a limiting document and that it particularly must limit power where it is concentrated most heavily in the executive branch,

the Presidency. Not many Presidents and too few Members of Congress I fear have understood this lesson.

I personally believe that few Presidents have misunderstood it as grossly as this President, but in fact all Presidents have sought to grasp and accumulate power at the expense of the other institutions of government.

I suppose it was inevitable that a time would come when this constant accumulation of power would have to be checked and curbed and done so in a manner clearly understood, not only by the President in office at that particular moment in history but by Presidents yet to come.

That duty falls first on this committee. We have begun to draw that line. We have begun the long overdue and the painful process of curbing the excesses of power in the executive branch. We will forward that process, Mr. Chairman, significantly by adopting article II tonight.

I yield back the balance of my time.

The CHAIRMAN. The gentleman from Iowa, Mr. Mayne, is recognized.

Mr. MAYNE. Thank you, Mr. Chairman.

First, I want to agree with the gentleman from Maine, Mr. Cohen, that the approach to Judge Byrne about possible employment as the new head of the FBI was certainly highly improper and to discuss with any judge in the progress of a trial, particularly a trial of major importance such as this, a possible promotion, if it was a promotion, just seems to me so obviously inappropriate that I am surprised and disappointed that this was done by a representative of the President in a conversation that the President himself participated very briefly, not dealing with the actual subject of the appointment, but I am also disappointed that Judge Byrne would entertain such an approach in any degree. He did not, of course, declare a mistrial on that ground. He declared a mistrial when the Government disclosed that there had been this invasion of Dr. Fielding's rights by the break-in. And this information was furnished voluntarily, albeit reluctantly, by the President after it became known to him upon the advice of counsel, I believe the Assistant Attorney General, that it—and the Solicitor General, Dean Griswold, that although it was not technically required, they felt that it was better under all the circumstances to reveal this and it was reported and a mistrial declared.

Now, I just want to emphasize in the time remaining to me that there is absolutely no question on the evidence in this case, aside from some of the argument, that there were serious national security problems in connection with these leaks which the President, carrying out his duty to uphold the defense and national security of the country, was determined to stop. These leaks affected the war in Vietnam where they affected our troops. They affected our attempts to negotiate the end of the war in Vietnam. They affected the SALT talks. They affected Guam. They affected various negotiations and relationships with the Russians. And to emphasize that this was a legitimate concern of the President, I just want to read from a couple of quotations from Dr. Kissinger referring to these leaks in the—and these appeared in the Presidential presentation book 4, tab 23B, and I quote Dr.



Kissinger referring to the damaging nature of these various leaks and disclosures upon our country's interests. And I quote Henry Kissinger :

Each of these disclosures was of the most extreme gravity. As presentations of the Government's thinking on these key issues, they provided the Soviet Union with extensive insight as to our approach to the SALT negotiations and severely compromised our assessment of the Soviet Union's missile testing and our apparent inability to accurately assess their exact capabilities. The disclosure of the assessment of the Soviets' first strike capability would provide a useful signal to the Soviet Union as to the efficacy of our intelligence system. It would also prematurely reveal the intelligence bases on which we were developing our position for the impending strategic arms talks.

And with regard to the negotiations on Guam, on page 86, Dr. Kissinger stated, and I quote :

The consequences of this disclosure attributed to well placed informants in terms of compromising negotiating tactics prejudicing the Government's interest and complicating our relations with Japan were obvious and clearly preempted any opportunity we might have had for obtaining a more favorable outcome during our negotiations with the Japanese.

Now, the President of the United States had a duty to act and he did act. He may not have done the most effective thing. Clearly this Plumbers unit went astray. They became law breakers. They were caught in a miserable crime out there in California. But there is absolutely no evidence that the President knew anything about the planning of that in advance.

I respectfully submit that the President did try, according to his best judgment, to protect the national security of this country and the mere fact that he didn't do it perfectly and got an inexperienced group in there who certainly botched the job and were a great discredit to our country in every respect, that does not mean that he was guilty of a high crime or misdemeanor for which he should be impeached and that is the only basis it seems to me under the Constitution under which we can find him impeachable. I yield back the balance of my time. I yield my time—my remaining time to Mr. Latta of Ohio, if I may.

The CHAIRMAN. The gentleman from Ohio is—the time of the gentleman from Iowa has expired.

The gentleman from New Jersey, Mr. Sandman, is recognized.

Mr. SANDMAN. Mr. Chairman, I don't propose to take up the 5 minutes and I hope that we can wind this thing up as quickly as possible and as gracefully as possible.

There is nothing that I can do, I am sure, that is going to change the outcome of the vote. But I would like to use these closing moments of this long and what some people will refer to as a historic exchange to capsule where we stand in my judgment and what I think we should be thinking about.

Now, at the outset I don't think I am the most naive person in the world, but I like to believe that every man that has ever been President of the United States had to be a good man and he had to be a great man or this great country would have never voted for him to be the leader of this country. It may be a surprise to some in this room but the President I was extremely fond of that I had the good fortune to know as everybody in the room did was not a Republican. It was Lyndon Johnson. And I thought it was a horrible thing during the Bobby Baker talks that some people thought, well, maybe we ought

to try to impeach LBJ. That was wrong and I hoped it would never start.

Now, anybody who feels this way, and I kind of think the country feels this way, they would like to believe their President is a pretty good man, and to do otherwise or prove to them otherwise, it would take a tremendous amount of proof to do that, and it should, tremendous. You can't do this loosely. And this is important. The whole world is watching this proceeding and what we do, we had better do right, because the effect of it is going to make a precedent for 1,000 years.

That is the importance of the question as I see it. And because of this, it disturbs me when I try to think of some of the problems involved, the Ellsberg break-in and whatnot. I think maybe we are a little bit mixed up and maybe we ought to sit down for a moment and review where we are.

I was on a program one time in Long Island. I walked in the room with a very famous man, a good Democrat, Senator Muskie. He got a pretty good hand. I am sure no one in the audience knew me. But what applause there was, I say they did it because of him. And then behind Senator Muskie, by about 3 or 4 minutes, walked in Daniel Ellsberg, one of the panelists on our program, and believe it or not, the stadium shook and I wondered why. Why did that happen? Here is a man who confiscated secret documents and against the law of the Nation he dispersed these documents. I thought that was wrong. And I couldn't understand why this fellow came in there like a hero. But he is. This is a strange thing happening in this country.

And now as a result of that, a mistrial was declared in that case and a man who is as surely guilty as guilty can be was never declared guilty, was never penalized and instead we now talk about impeaching the President of the United States.

I think our thinking is a little fuzzy here and maybe we ought to sit down and look over that once again and make sure we are doing the right thing. Is it more popular to give away secret documents than it is to protect the security of a great nation? I don't think so. And I would like to believe in the absence of extremely heavy proof that what the Chief Executive did he did for a good purpose, and this is why I have the strong feelings in the direction that I have and that is why I have argued the way I have in this proceeding.

I don't take my obligation here any more lightly than any other person and I believe that what we are doing here, we are acting as a judiciary in a sense. We are judging whether or not the President of the United States should be replaced. We are judging the rights that he has as an individual as well as a President and it is not in line with what at least I learned in the 20 years that I went to school that he has any less rights than any other American, and no one can ever make me believe that due process still isn't the law of this land and it is always going to be the law of this land. And for these reasons I think we have to not make an inference against the President of the United States, if anything we have to make an innocent's—an inference that what he did he did in the best interests of the country. This is what I would rather believe.

The CHAIRMAN. The time of the gentleman has expired.

MR. SANDMAN. For this season, even though it is not going to be a popular position that I have taken, I know that, I am convinced it is the right one, or at least I hope it is, and only time will tell.

The CHAIRMAN. The time of the gentleman has expired.

The gentleman from Massachusetts, Mr. Donohue.

MR. DONOHUE. Thank you, Mr. Chairman.

You know, the debate on this article, and article I last evening, seems to have been developed into the proposition that unless the President personally or individually authorized the activities set forth in articles I and II, the charges set forth therein have not been sustained.

Now, let us look at the Federal Papers for a little guidance and the statement made by James Madison, one of the main architects and Framers of our Constitution.

He went on to say: "I think it absolutely necessary that the President should have the power of removing from office. It will make him in a peculiar manner responsible for their conduct, and if he suffers them to perpetrate with impunity crimes and misdemeanors against the United States, he will be subject to impeachment."

And he goes on to say, quote: "Or if he neglects to superintend their conduct so as to check their excesses, he shall likewise be subject to impeachment." And Madison went on to say: "On the constitutionality of that declaration I have no doubt."

Now, the question is, did President Nixon, a recognized, sophisticated, astute public official, who has been described by his deputy assistant, Mr. Butterfield, as a stickler for detail, and a person who made all decisions, know of these operations that were being directed by trusted and loyal members of his official White House family? This member believes that he did.

You know, on the day in 1789 when the Constitution was adopted, Benjamin Franklin was asked by a lady: "What kind of government have you given us?" And Mr. Franklin replied: "A republic, madam, if you can keep it."

I believe that we will keep our republic and that the process that we are engaged in during these proceedings will help us.

The CHAIRMAN. I recognize the gentleman from Maryland, Mr. Hogan.

MR. HOGAN. Thank you very much, Mr. Chairman.

I would like to return to a thought which my esteemed ranking minority member offered to us this morning. He reminded us that a few years ago the country was being torn apart by groups of people that were going around bombing college campuses, burglarizing draft boards and ROTC facilities, and destroying the work of scholars and engaging in all sorts of lawless activity because they disagreed with the Vietnam war, they disagreed with the draft, they disagreed with the position of the Nixon administration, and they felt that because their cause was just they could commit these crimes. They felt that they were above the law. Most of them had long hair and beards and dressed as nonconformists and desecrated the flag.

Inside the White House at the same time there was another group of men who wore well-tailored business suits, close-cropped hair, no beards, and wore flag pins in their lapels. They disagreed with all of

these other people, they thought that the cause was just, they believed that the Vietnam war was justified, they supported this administration, but they felt that because their cause was just they too were above the law. And for several months we have had a chronicle of all of the illegalities and crimes that they have committed under that assumption.

Now, obviously both of those groups of people were wrong. Both should be held accountable for the violations of the law.

Now, what we are debating today is whether or not the President of the United States lived up to his constitutional responsibility to faithfully execute the laws and the duties of his office. And we have talked a lot about this all day. And I would like to read for you verbatim the oath that every President of the United States is required to take under article II of the Constitution. The President must state and swear, quote: "I do solemnly swear that I will faithfully execute the office of the President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

What we have been debating today is whether or not he has lived up to that.

The British House of Commons impeached the Earl of Suffolk for high crimes and misdemeanors, 600 years ago, and that is the first reference in all of history to this term which has become so familiar, if not fully comprehensible to all of us on this committee. The wrongdoing against which the crimes and misdemeanors charge was made at that time involved some form of corruption of office or misuse of office, offenses which inflicted some great injury on the state.

Now, based as it was on hundreds of years of British precedent, our Founding Fathers who established this country used the same term, "high crimes and misdemeanors," clearly intending not as a catch-all phrase with which to threaten Presidents and confound lawyers and scholars and members of Judiciary Committees, but as a broad, widely recognized standard of impeachable conduct. The abuse of power by those in high office, then, constituted what was essentially the first impeachable offense, and what is still today the touchstone of our debate.

Now, as the consistent abuse of power holds greater danger for the republic than does a single criminal act, it is a much more serious offense and a far more serious charge than the one that this committee has already approved. Now, has the President faithfully executed the laws?

Title 18, section 4 of the United States Code says, quote:

Whoever, having knowledge of the actual commission of a felony recognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or some other person in civil or military authority in the United States shall be fined not more than \$500 or imprisoned not more than 3 years or both.

That is under misprision of felony. I submit that our record is replete with a whole litany of repeated offenses of this particular statute. The CHAIRMAN. The time of the gentleman from Maryland has expired.

I recognize the gentleman from Alabama, Mr. Flowers.

Mr. FLOWERS. Thank you, Mr. Chairman, and I shall be very brief.

I listened with much interest to my dear friend, and he is my dear friend, from New Jersey, Mr. Sandman. And I find that I agree with almost everything he said except the way he put some of the things together. And I cannot quite do it that way for myself, although I do not say that he should not have the right to look at it the way he does, and I respect him, and he knows I respect him. And we will be together on something else maybe later this week or next week. But, you know, Mr. Chairman, I think that this article of impeachment is perhaps more important than article I, as some others have said. As I see it, article I could even perhaps be included as a subparagraph or a subheading under this article II. There are some things here in this article that I do not feel as strongly about as I do others, but overall I believe it to be a strong case made out by article II.

Eternal vigilance is the price of freedom, and if this President failed to assert that affirmative duty to take care that the laws be faithfully executed, if he has failed to resist even the transgressions of these laws before his eyes and ears. If he has violated the so-called sensitive agencies of our Government, and I believe he has, and these sensitive agencies are both necessary and useful, but also precarious in our system, then this President has abused his public trust and he ought to be impeached.

With the same reluctance and with the same sorrow and regret that was mine on Saturday, Mr. Chairman, I find that I must also support this article of impeachment.

The CHAIRMAN. I recognize the gentleman from Virginia, Mr. Butler.

Mr. BUTLER. I am not seeking recognition at this time, Mr. Chairman.

The CHAIRMAN. I recognize the gentleman from South Carolina, Mr. Mann.

Mr. MANN. Thank you, Mr. Chairman.

You know, we know Charlie Sandman and we appreciate him, and I am going to refer to him, too. Charlie was talking about how Ellsberg got the applause, and I join with most of you in feeling that except for certain mistakes, Mr. Ellsberg should have not been at that place at that time. But, he was evidence of our system because our system looked out for the underdog. Our system looks out for the rights of individuals, the little man.

In the history of America, it is the history of the protection of the rights of the individual citizen. Look at every decision of our Supreme Court, and whether we like it or not, whether they are freeing a rapist or a murderer, they are interpreting the Constitution of the United States and its laws to protect that individual from the power of his Government.

You have heard a lot about our system and it is really synonymous with the phrase, the rule of law. In article II we find this language, "in disregard of the rule of law." You know, there was one man in this Government that I have to mention as he has been mentioned by others, and it has been tough for me to hold back on him. Johnnie Walters practiced law upstairs above my office in the two-story building where he and I practiced law back in the middle sixties, and when

I came to Congress and left him in Greenville, S.C., he was not far behind me, as he came to Washington to serve in the Department of Justice, and then as Commissioner of the Internal Revenue Service. Mack Walters respected the rule of law.

You know, Americans revere their President, and rightly they should because they know that by his oath he is supposed to preserve, protect and defend the Constitution, to enforce the Bill of Rights, which is their heritage, your rights and mine, whether I am a Democrat or a Republican, rich or poor, and that he will see that the laws are faithfully executed and that the individual liberties of each of us is protected, whether President or pauper.

Now, this committee has spent 10 weeks reviewing the evidence, and it is not fair to you in these sessions to pull the tidbits out on one side or the other. There is no way that you can bring yourself in the position that we are in with the knowledge of the facts that we have. I wish you could. As your Representatives, we are charged with determining that truth, and although we have laid something on the table during these past 3 or 4 days, and having sat here during these 3 or 4 days I have heard people ask questions about what the evidence was, and I have been wondering if maybe they were here with me, because it is on that evidence that each of us is making our decision, and as we seek a way to escape that decision, we cannot escape that still, small voice. And so, as Thomas Paine wrote, "Those who expect to reap the blessing of freedom must, like men, undergo the fatigue of supporting it."

And in this situation, as we look at how the office of the Presidency has been served by an individual, I share the remarks of George Danielson that it is not the Presidency that is in jeopardy from us. We would strive to strengthen and protect the Presidency. But, if there be no accountability, another President will feel free to do as he chooses. But, the next time there may be no watchman in the night.

The CHAIRMAN. The time of the gentleman has expired.

The gentleman from Mississippi, Mr. Lott, is recognized.

Mr. LOTT. Thank you, Mr. Chairman.

I would first perhaps submit, or ask my colleague from South Carolina, who is the underdog now?

Mr. MANN. I would like to answer that.

Mr. LOTT. All right, sir. I yield.

Mr. MANN. Because I am fully aware that many American people consider that the President is being attacked and abused by sinister forces in this country, by the leftwing press or by the Democrats, and I can assure this gentleman that it matters not to me his party or his position. He is subject to the rule of law, and to justice, and in my role under my oath, he will get it, be he President or be he pauper.

Mr. LOTT. I appreciate the seriousness of the gentleman, and I, too, share that feeling. And I think that knowing of my background, I think he knows that this is not a matter of partisanship with me, either. It is a very serious matter. We are setting a precedent for the future of whether or not a President, because he is unpopular, because of some acts of his aides, even mistakes, or parts of several cases—will a President be impeached.

Now, several of you here tonight referred to a gentleman by the name of Butterfield that came in and testified, and I would like to

refer to some of his testimony. In one area he testified "everything I am saying to you, incidentally, is judgment, guess. I don't claim to be—to have precise knowledge.

And when I asked him questions about his position sitting right there in the middle of the White House, right next to the Oval Office, I said:

In view of your situation, your location there, and of what has subsequently occurred, and the fact that you were staying abreast of what was going on, did you have any knowledge of the Watergate cover-up?

No, he did not. But he was sitting there right next to what was going on, right next to the President. And I asked him did he know about the Plumbers? He did not.

Now, what we have got here in article II is a catch-all accusation. It lumps together five separate charges with a connecting link of only certain common phrases. The purpose, in my opinion, is to put together several partial cases with the hope that the result would be one whole case.

Grouping these different charges together in one article represents a clear attempt to accumulate guilty votes, and would be completely improper under any theory of criminal proceeding.

In subparagraph 1 of article II, the President is accused of trying to improperly use the IRS. In subparagraph 3, he is accused of the Watergate cover-up and other unlawful activities which were subsequently specified. There is no real connection between them. It is clear, though, why the catch-all approval has been adopted, and why that is the approach being used. A Congressman who believes that the President should be removed from office for interfering with the FBI may add his vote to the total, even though he does not believe, for example, that the President in any way approved the break-in into the office of Dr. Fielding. Another Congressman may vote for the entire article because he subscribes to one paragraph and he may not subscribe to subparagraph 5.

In criminal justice, such words as duplicity and prejudicial joinder of offenses would come into play, but we do not have it here. I think that we do have parts of several cases, and maybe it gets up to three-fourths of a case, or an eighth, or whatever, but you get them together and you get on a tack, and let me quote the words of Senator Austen in the impeachment trial of Judge Ritter in 1936: "Six legal noughts cannot become a unit of legal accountability."

Again, I think we must consider the overall impact of what we are doing here is going to have on our country for years to come.

The CHAIRMAN. The gentleman from Maryland, Mr. Sarbanes, is recognized.

Mr. SARBANES. Thank you, Mr. Chairman.

It is imperative that every American appreciate that the abuses of power discussed here today, those that we have reviewed in the course of consideration of this article, placed in jeopardy our free society and endangered our liberties and our constitutional rights. And that in the course of this effort, there was also an effort to twist the proper functions of Government agencies so that rather than such agencies being your servants, serving you, there was a grave danger that those agencies would become your oppressors.

Stop and think for a moment, if you will, what it means if the agencies of Government are not administered in an even-handed manner; if people elected to public office, rather than considering it a public trust, believe that they are entitled to use the power of Government not to serve the people but to maintain themselves in personal power. It is extraordinary to assert, as has been asserted on occasion during the course of our discussion, that because bad things in the end did not happen, those who sought to make those bad things happen should not be held responsible.

Stop and think for a moment. Those bad things failed to happen not because those at the top did not seek to make them happen, but because dedicated and committed people in various places in Government refused to be bent and twisted to improper purposes. The Commissioners of Internal Revenue would not allow, in the end, that agency to be used in a discriminatory fashion against the American people. The FBI Director would not accede to the Huston plan, which for a brief period was approved by the President of the United States, and which provided for covert mail covers, surreptitious entry, an illegal electronic surveillance, all of which J. Edgar Hoover dissented to, and it was Hoover in the end who went to the President and insisted that this plan not be implemented.

What happened then? They went outside of the agencies of Government; unable to bend the agencies to their purpose, they decided to go outside of Government and develop their own establishment. That is what the Plumbers was. It was not a legitimately constituted law enforcement agency. It was an irregular ad hoc group established to carry out certain activities, and how was it paid for? In part, it was paid for through money raised privately.

We spoke earlier of how a private person was contacted to bring money to the White House to be furnished to the Plumbers in order for them to carry out the break-in of the doctor's office, and that money was returned to the private person who provided it in the following manner:

Mr. Colson called up the attorney for one of the milk producer cooperatives and asked him to have the cooperative make a contribution to a political committee called, of all things, People United For Good Government, and a \$5,000 contribution was made by the milk cooperative to that political committee. That check was cashed, and the man who provided the original money, in order to carry out the break-in, went to the treasurer of the political committee and recovered his \$5,000.

Now, stop and think of that. You have an irregular group, not part of an established law enforcement agency, and its activities are being funded through money raised privately. Think of the implications of that for all Americans.

Mr. Chairman, I submit we came perilously close to losing our basic freedoms. And it is for that reason that we must act affirmatively here tonight. This is a long step forward in restoring the health of our constitutional system. We do it, Mr. Chairman, pursuant to that Constitution. We do it with a strong sense of responsibility and a powerful belief in America and in the decency and the honesty of her people.



The CHAIRMAN. The time of the gentleman has expired.

I recognize the gentleman from Wisconsin, Mr. Froehlich.

Mr. FROEHLICH. Mr. Chairman, my concern over the extended use of the wiretaps and the abusive use of the IRS have been fully developed here this evening and today, and I, therefore, yield to the gentleman from Ohio, Mr. Latta.

The CHAIRMAN. The gentleman from Ohio is recognized.

Mr. LATTA. Can I take my time now, Mr. Chairman?

The CHAIRMAN. Without objection, it is so ordered, and the gentleman is so recognized.

Mr. LATTA. Thank you, Mr. Chairman, and thank you, Mr. Froehlich for yielding to me.

Mr. Chairman, if we had not had all these weeks of in-depth study on the evidentiary material, I frankly would have a hard time making a judgment on this article after hearing all of these remarks that have been made by our colleagues. I think this probably is attributable to the fact that I believe in the history of the Congress that there has not been a committee that has studied so intently for such a long period of time and given such attention, and I do not believe we have ever had a committee in the Congress that has had better attendance, even behind closed doors at committee sessions. And I want to commend you, Mr. Chairman, for the attention that you have given and the direction that you have given in this.

Certainly there are disagreements, and I think by now there is one thing on which we can all agree, however, and that is that there are many areas of disagreement.

And our vote depends on which interpretation we place upon them. If we choose to view the President in a bad light, we can do that, and if we choose to view him in a good light, there is ample evidence to permit us to do that.

We have also learned this afternoon that a majority on this committee wishes to hold a President impeachable for actions of subordinates under subparagraphs 1 and 2, even though he had no knowledge of the action of said subordinates.

Now, Mr. Chairman and members of this committee and fellow Americans, this bothers me tremendously.

Mr. RAILSBACK. Would the gentleman yield?

Mr. LATTA. I will be happy to yield.

Mr. RAILSBACK. Thank you for yielding.

You are not suggesting, I take it, that in respect to the subparagraph 1 relating to IRS that on September 15, there was no conversation between John Dean and the President at which time John Dean has testified that there was an extensive discussion about the IRS audits?

Mr. LATTA. I have direct reference to the refusal of this committee to adopt the Wiggins amendment.

Mr. Chairman, as I say, this bothers me tremendously, not only for now, but for the future.

What we do here will be written down as a precedent to be used in the future, and I'm not particularly concerned about the present occupant of the White House. I am most deeply concerned about the Office of the President of the United States, and where that Office will be not 10 years from now or 20 years from now, but in generations

to come, because I highly revere that office. It is the most respected office in all the world, and it is the most powerful. Nobody can deny the fact that every nation on the face of this globe looks to the Oval Office of the President of the United States, and what we are saying here is that we can impeach a President for actions of his subordinates without his knowledge. And what can that do to the Office of the President in the future, when you can impeach for actions of a subordinate without his knowledge? As members of this committee know, there are approximately 3,900 employees at the Executive Office of the President. There are 2,600,000 employees of the Federal Government, not counting the military. Could somebody down the line, years hence, interpret our actions here that he would have to be held accountable for any and all of these actions, even though he had no knowledge of them, because they are under his jurisdiction, under his administration, and technically they are? So, I think that we must proceed with utmost caution, that we weaken, that we weaken that office that we hold so dear.

And let me direct my attention in the few moments that we have to another area that concerns me, because we have touched upon it so lightly. In fact, I heard somebody say, and I am sure he said it in jest, something about it is a bugaboo, and I have reference to national security. National security. What are we talking about? We are talking about protecting the lives and the security of 220 million Americans. That is what we are talking about. So, let us not talk about it lightly.

I happen to be one who since I have been in the Congress of the United States who has supported a strong national defense, a strong national defense. We cannot be second. We have got to be strong, and we are talking about national defense as a bugaboo issue? I think not.

The President of the United States was concerned about leaks right after he took office. Now, let us take a look at what he was talking about. Where were these leaks coming from? Were they coming from somebody's bridge club or out of some nonsensitive agency of the Government? We know better than that. They were coming from no other place than the National Security Council.

Now, who sits on the National Security Council? Staff members? The President of the United States, the Secretary of Defense, the Secretary of State, and the Director of the Central Intelligence Agency, along with the Secretary of the Treasury and the Attorney General by designation of the President. Now, they do not talk about rules for a handball game. They discuss and make the policy for the defense of this country, your defense, my defense, our children's defense. That is what they do. And these leaks that concerned the President of the United States were coming directly out of that National Security Council.

Now, what were they? Many of our colleagues here today have alluded to them, and I do not want to duplicate what they have said. But, let me point out that about every time the National Security Council would make a decision, a couple of days later, and I hate to mention newspapers, but I must, the New York Times would publish it or the Evening Star. Would this not concern you? It concerned me. It concerned the President.

Let me give you just one. On April 6, the New York Times prints a front page article indicating U.S. consideration of unilateral withdrawal. June 1969, shortly after a decision had been reached to begin initial withdrawal of troops, the New York Times and the Evening Star reported this decision indicating that it would be made public following the meeting, following the meeting with the South Vietnamese President Thieu. Leaks damaging Dr. Kissinger's diplomatic efforts to end the war. For the South Vietnamese Government to hear publicly, publicly of our apparent willingness to consider unilateral withdrawal without first discussing the matter with President Thieu, what does this do to our credibility? Damaging leaks had been occurring with regard to the SALT negotiations, and they had been discussed, and the internal uses by our Government of the strategic force posture.

A study was made to determine what programs should be adopted relative to our country's, get this, deterrent conventional and nuclear capability. The study included five possible strategic options from an emphasis on offensive capability to heavy reliance on anti-ballistic-missile systems. Costs even were discussed. Notwithstanding the obvious need for secrecy of this study, the May 1, 1969, edition of the New York Times reported the five strategic options under study and even gave the cost estimates.

The U.S. Intelligence Board, having been engaged in an analysis of the Soviet Union's testing of missiles, and issued a report in June 1969, setting forth their estimate of the Soviet Union's strategic strength and possible first-strike capability——

The CHAIRMAN. The gentleman has consumed 10 minutes.

Mr. LATTI. I wish I had 10 more, Mr. Chairman.

Thank you.

The CHAIRMAN. The gentleman from Ohio, Mr. Seiberling, is recognized for 5 minutes.

Mr. SEIBERLING. Thank you, Mr. Chairman.

I think that the gentleman, the other gentleman from Ohio, put his finger on one of the very fundamental issues which brought about this proceeding which is whether, under the guise, the phrase national security, the President has a blank check to violate the law, because that is what this issue is all about.

When Attorney General Ruckelshaus declined to fire Special Prosecutor Cox after Elliot Richardson had resigned because he declined to fire him, you remember what General Haig, the President's top aide, told him. He said: "Your Commander in Chief has given you an order."

And Mr. Ruckelshaus had to remind him that he was subject to the law. Even that the Commander in Chief could not give an order that violated the law.

Now, let us take a look at that law.

Point 5 of this article talks about that disregard of the rule of law by the President of the United States, and among other things, he disregarded it when he fired the Special Watergate Prosecutor, Archibald Cox, or ordered him to be fired.

Now, let us go back to April 30, 1973, when the President accepted the resignation of Haldeman, Ehrlichman, Kleindienst, and Dean. He

at that time pledged to the American people that he would do everything in his power to insure that those guilty of misconduct within the White House and in his campaign organization were brought to justice.

And he announced he was going to appoint Elliot Richardson Attorney General and he announced Elliot Richardson would appoint a Special Prosecutor and in due course that came to pass. And Mr. Richardson submitted to the Senate committee a statement of duties and responsibilities of the Special Prosecutor and the statement provided that he would have jurisdiction over offenses arising out of the Watergate break-in, allegations involving the President, members of the White House staff or Presidential appointees and they also provided that the Special Prosecutor would have full authority for determining whether or not to contest the assertion of executive privilege or any other testimonial privilege, and that he would not be removed except for extraordinary improprieties.

Now, the law had already been long established by the Supreme Court in the case of *Accardi v. Shaughnessey* in 1953 that as long as the Attorney General's regulations remained operative they had the force of law and denied him or any other member of the executive branch the right to violate those regulations, and such were the regulations under which the Special Prosecutor was operating.

That principle was upheld again as recently as last week when the Supreme Court reaffirmed it in the case of *United States v. Nixon*.

Now, we all remember the shock that we all experienced last October when in quick succession two Attorneys General and the Special Prosecutor were fired on order of the President because they had the temerity to carry out an order of a district court of the U.S. Government which order had been appealed and affirmed by the court of appeals. The order directed the President to turn over the tapes.

And it was that act by the President which caused the House to order this impeachment investigation.

Now, I have always believed that any man elected to the highest office in the land would rise to the occasion. Like every American, I want to believe the best of my President, and I have tried to do so as I studied the evidence before us in this proceeding.

And now I must sadly say to my friends on this committee and in the country: He let us down.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The gentleman from California, Mr. Moorhead, is recognized.

Mr. MOORHEAD. Mr. Chairman, members of the committee, one thing certainly must be clear by now to everyone in America and that is certainly the President of the United States is not so all powerful under any circumstances that he cannot be examined one way or the other for his acts, and if necessary be removed from office. I do not believe that any man in the history of this world has ever been examined as thoroughly as this President, Richard Nixon.

I do not know of anyone who has ever had \$25 million of Federal money spent on various investigations over a period of 2 years time. Many, many more millions of dollars by other private agencies.

Everything that Mr. Nixon could possibly have done wrong has surely been uncovered by this time.

And yet, you look at the evidence that is brought to us here today and it almost seems pathetic that \$25 million brought in so very little.

If IRS was used wrongly, no one would object louder or stronger than I. I spent 16 years running a legal aid and lawyers reference service and no one has any more respect for the underdog or the law than I do. And there is nothing that brings the fear into the heart of the average American than is brought into their heart by an IRS audit. That must be clear to everyone.

But, the cold hard facts are that the IRS was not misused by the President. It is true that 4 days before he talked to the President Mr. Dean at least took a list of enemies to the IRS and asked for something to be done about it. But, the evidence that was brought to us by our staff is that the President's connection with Mr. Dean was very, very slight during those particular days and picked up only in the months of 1973.

Now, it is true that Dean and Nixon had a meeting on the 15th of September, but there is not one shred of evidence that anything was done as a result of that meeting on the 15th of September. And no real evidence that anyone took those comments seriously, and certainly on Mr. Dean's request the IRS consideration of certain people, there was nothing done. The names were put away and were never presented to another soul.

There has been a suggestion that perhaps the IRS was used to help friends.

Well, certain people, evidently a few of them, had come to the people in the White House and said that they were being harassed by the IRS.

I wonder how many Congressmen have had people come to them and say that they were being harassed by some agency of the Federal Government? These were checked into by a simple request of what is happening. This was the testimony that we have. There was no special consideration given. There was no evidence of any pressure put on these people. What kind of a count for impeachment is that?

We have the question of the Plumber's group. The Plumbers is a name of art that has been given to this special group. I do not approve of many of their later activities. Certainly they went beyond any power that the President expected them to have. We have the testimony, the sworn testimony, of Egil Krogh. He said with respect to the purpose for the special investigations unit that it is in Mr. Krogh's sworn testimony that on or about July 15, 1971, he was given oral instructions by Mr. John Ehrlichman to begin a special national security project to coordinate Government efforts to determine the causes, sources and ramifications of unauthorized disclosure of classified documents known as the Pentagon Papers.

We have other national security matters. We have the 17 wiretaps that were approved by J. Edgar Hoover and the President. There is mention made of two or three other wiretaps that were not authorized by the President and no showing whatsoever of any authorization by the President. But, the 17 wiretaps were actually made at the President's request, or at least with his signature and were very definitely brought about by a very great concern of Henry Kissinger with the

SALT negotiations that were going to take place and with the knowledge that might be given to a foreign country.

The CHAIRMAN. The time of the gentleman has expired.

Mr. MOOREHEAD. I would like another 10 minutes too.

Mr. DANIELSON. Thank you, Mr. Chairman.

I am proud—

The CHAIRMAN. The gentleman has not yet been recognized.

The gentleman is recognized for 5 minutes.

Mr. DANIELSON. Well thank you again Mr. Chairman. I am very proud and honored to associate myself with the remarks of my dear friend, and very great lawyer, the gentleman from Massachusetts, Mr. Donohue.

Mr. Chairman, our debate today has distilled the issues of this article to where we all know and can clearly see that they constitute a clear threat and an attack against our Constitution which is the essence and the soul of our Republic. We cannot and must not fail a responsibility which is ours, and so again, with heavy heart and great sadness we must vote for this article of impeachment.

I yield back the balance of my time.

The CHAIRMAN. The gentleman from New Jersey, Mr. Maraziti is recognized.

Mr. MARAZITI. Thank you, Mr. Chairman.

We see here the sharp differences in the interpretation of the facts and the law in this matter. Mr. Chairman, I submit that we have these sharp differences because the case and the evidence is not clear and convincing against the President.

Several allegations are now set forth, and the proponents of the resolution to impeach continue to refuse to set up the specific allegations in the articles.

We have theories propounded that the President should be held accountable for the acts of his subordinates even though he has no knowledge, and did not authorize certain acts. A great deal has been said and in fact, proven, that this staff did this and that staff member did that and these staff members in concert did this and did that.

But, Mr. Chairman, I submit to you that the proof fails and fails in a very vital respect when it fails to draw the line to the President of the United States.

Now, on the question of wiretapping that we have heard so much about, and without going into details because it has been thoroughly discussed, what do we really have here? We have heard the urgent pleas by Mr. Henry Kissinger to stop the leaks from the National Security Council.

Mr. Chairman, these pleadings were made not just by an ordinary individual that might not have had the knowledge and information necessary to appreciate the seriousness of the situation, but no less a man than Henry Kissinger who in my opinion would be the highest authority in the land as to whether or not leaks would affect the security of the United States.

And what do we have here in response to that plea? The President, in pursuance of his constitutional duty, his constitutional duty to protect the United States, ordered the wiretaps and stopped the leaks. And as I said in my previous remarks today, I for one, Mr. Chairman,

would, on the basis of Henry Kissinger making a request, if Mr. Nixon refused to take this action to protect the United States by ordering these wiretaps, I for one would vote to impeach him for that refusal of his constitutional duty and responsibility.

In closing, Mr. Chairman, let me say that I think that I ought to give some serious consideration to exactly what we are doing here.

Mr. Richard Nixon was elected by 47 million people of these United States to be the President of the United States and from what I have heard and what I have heard today I cannot and will not bring myself to remove, to vote to remove that choice of 47 million people and impeach Richard Nixon, the President of the United States.

Mr. Chairman, if I have any time left I yield the balance of my time to Mr. Latta.

The CHAIRMAN. The gentleman has 30 seconds remaining.

Mr. LATTI. Thank you, Mr. Chairman.

Let me just complete my comments concerning the national security and the threat was compounded by the fact that Mr. Ellsberg was a former staff member of the National Security Council itself and the prospect that he might divulge additional information, and the realization that the Soviet Government had already received a copy of the Pentagon Papers on June 17 and might be the recipient of additional classified information. He also had had a broad area of access to the clearance to see classified information, including SIOP, better known as the Nation's single integrated operations plan. Now, what does this encompass? Nothing other than all, and I stress the word all, of this Nation's military contingency plans in case of war, including integrated conventional and nuclear options. That is what concerned the President.

The CHAIRMAN. The time of the gentleman has expired.

I recognize the gentleman from Massachusetts, Father Drinan.

Mr. DRINAN. I am happy to yield to Ms. Jordan 1 minute of my time. Ms. Jordan.

The CHAIRMAN. The gentlelady from Texas is recognized.

Ms. JORDAN. Thank you, Mr. Drinan.

Mr. Chairman, one phrase in subparagraph 3 of article II which has generated much debate is that acting personally, or through his subordinates and agents. There is no need to substantiate this phrase by agreeing or disagreeing with the Madison Superintendency Theory, because the charges which underlie this phrase are permeated with Presidential command, Presidential directions, the President in charge. The colloquy which gives the greatest clue to this chain of command as the President knowing what his subordinates did is not the testimony of Mr. Butterfield.

We do not have to rely on him. We have an exchange between Mr. Thornton of Arkansas and Mr. John Mitchell.

Mr. THORNTON. Did you ever check to determine whether or not the information relayed to you through Mr. Haldeman was a correct reflection of the President's instructions?

Mr. MITCHELL. There may have been occasions, Congressman, but I would have to say that in most all instances that I can recall Mr. Haldeman's representations to me of the President's position were truthfully and fully stated.

Mr. THORNTON. Did you ever check with the President to determine whether information you had passed toward him through Mr. Haldeman had been received by him?

Mr. MITCHELL. No, I don't believe I did. But I think there again the record of actions coming from such line of communication would indicate that they were fully and faithfully conveyed.

Mr. DRINAN. Mr. Chairman, this article is so overwhelming that I do not think that it is an exaggeration to say that history will judge this as comparable to the moral rebellion centuries ago at Runnymede. They were our legal and moral assessors because they revolted against tyranny. But, I want to pay tribute tonight to two men who made this possible. I am honored and humbled because these two men happen to be my constituents.

One is a Democrat and one is a Republican. And I speak about Archibald Cox and Elliot Richardson.

When they followed their own conscience, 3 million citizens wired their Congressmen, and this inquiry began. These two good men never realized that their decision not to submit, not to go along, would force every Member of Congress and every American citizen to make the same moral decision.

They were the first to see the repeated abuses of the constitutional rights of citizens on which this committee is to act tonight. Mr. Cox, the former Solicitor General of the United States, distinguished professor and author, he would not back down, he would not become a part of the coverup. And Elliot Richardson, the former attorney general of Massachusetts, Secretary of HEW and Defense, he gave up his entire career rather than tarnish his soul and permit himself to be a part of the coverup.

I pay tribute to these two men. Without their courage, the victory for justice which we witnessed here tonight could never have happened and, Mr. Chairman, I hope their courage will continue to be contagious.

I yield back the balance of my time.

The CHAIRMAN. I recognize the gentleman from New York, Mr. Smith.

Mr. SMITH. I thank you, Mr. Chairman.

Mr. Chairman, we have spent all of today in the debate of this article II which says that the President of the United States, contrary to his trust as President and subversive of constitutional Government, repeatedly engaged in conduct violating the constitutional rights of citizens, impairing the due and proper administration of justice and the conduct of lawful inquiries, for contravening the laws governing agencies of the executive branch of the Government and I think probably everything has been said about this that could be said. From the comments that have been made I would say that a majority of this committee believe that we will support this article and believe what it says and there are some who don't feel that the evidence as such that has been produced in this long proceeding that this committee has been involved in makes out a clear and convincing case that this is so, that the President of the United States himself.

With that, Mr. Chairman, I would like to yield 2 minutes of my time to the gentleman from Indiana, Mr. Dennis.

The CHAIRMAN. Mr. Dennis is recognized for 2 minutes.

Mr. DENNIS. I thank the gentleman for yielding because something the gentleman from California, Mr. Moorhead said, struck a very responsive chord with me.



I believe I have spent as much time in courtrooms defending the underdog as any man or woman on this committee and I have done it enforcing their civil rights, too, where it counted, and I have done it when every man's hand in the establishment was against my client and when every public organ was crying loud for his blood. So that situation is nothing new to me at all.

But I never expected to find myself in a similar situation where the President of the United States was concerned and now that I have, I simply want to say that it is my belief and opinion and my sincere opinion and belief that the President of the United States has exactly the same rights and I will stand up for them exactly the same way as did those humble citizens I used to represent.

I thank you.

Mr. McCLODY. Will the gentleman yield to me?

Mr. SMITH. I will be happy to yield to the gentleman 1 minute.

The CHAIRMAN. The gentleman is recognized for 1 minute.

Mr. SMITH. One minute.

Mr. McCLODY. I thank the gentleman for yielding and in 1 minute I would like to explain that while I voted against article I, which was the vote that we took on the last article, that I intend to vote in favor of article II. In my opinion there was no clear and convincing proof of any criminality or any conduct of the President which involved him as a coconspirator, but the President does have a constitutional oath and an obligation to see to the faithful execution of laws and with multiple acts of misconduct, with criminality being conducted in and around the White House by many of his top aides, it seems to me that the President has failed us in this take-care provision of the Constitution.

While I bear no malice and no hostility to the President, it seems to me that I have an obligation myself as a member of this committee when I see the constitutional obligation in default to support an article of impeachment.

I thank the gentleman.

The CHAIRMAN. The gentleman has 40 seconds remaining.

Mr. SMITH. Mr. Chairman, thank you very much, and I am sorry that my remarks, brief as they may have been, failed to sway my colleague from Illinois who sits on my right, and with that I yield back the balance of my time.

The CHAIRMAN. I recognize the gentleman from New York, Mr. Rangel.

Mr. RANGEL. Thank you, Mr. Chairman. I would like to thank you and the members of this committee because through their decision they have restored some faith and integrity to our system of Government. We have heard in the past many times the words "law and order" but most Americans recognize who those words were directed at and exactly what those words really meant.

Today, Mr. Chairman, that phrase can be restored to some of its original meaning because we have established some law and some order as relates to the abuse of Presidential power.

The Vice President of the United States has reportedly said that this committee does not properly reflect or represent the Members of the House of Representatives, and perhaps it does not, for what committee truly does?

Nevertheless, the committee system is a part of the House of Representatives and it is not a part of our American way of life to attack the entire system merely because we differ with the results.

The President of the United States not only disregarded the law but in fact feared the law and feared the grand jury system in our Nation's Capital.

On March 27, 1973, the President is talking with Ehrlichman about the fate of Mr. Mitchell, Mr. Ehrlichman said, "I think we have to recognize that you are not going to escape indictment," talking about Mr. Mitchell. This is what they were supposed to tell him. "There is no way. Far better that you should be prosecuted on information from the U.S. attorney based on your conversation with the U.S. attorney than on an indictment by a grand jury of 15 blacks and 3 whites after this kind of an investigation." The President responded, "Right. And the door of the White House, we are trying to protect it."

Well, Mr. Chairman, I am satisfied that while the President is protected from indictment at this time, from a grand jury in the Nation's Capital, and while he has been denied his day in court as relates to the criminal courts, that I am satisfied that he would have had a fair hearing in the House of Representatives, that he will have a fair trial in the U.S. Senate, and for the American people and its Constitution, it would have had its day to prove that the system can work and indeed it has been a victory for law and order.

Thank you, Mr. Chairman.

The CHAIRMAN. I recognize the gentlelady from New York, Ms. Holtzman.

Ms. HOLTZMAN. Thank you, Mr. Chairman.

A question has been raised tonight, what are the rights of the President? And I think we have to confront what his duties are. And he takes an oath, a solemn oath to defend and protect the Constitution of the United States to the best of his ability.

The Preamble of this Constitution says, "We, the people of the United States \* \* \* to secure the blessings of liberty," and that is our precious heritage.

And what has this President done; what are the acts this committee has examined? We have seen the President has engaged in a course of conduct in which the ends justify the means and in which the "blessing of liberty" have been trampled to our disgrace.

Let us look first at this Huston plan which the President—our President, your President and my President—approved. This Huston plan, which I read in anger twice or three times, says that dissent is tantamount to treason and because it is tantamount to treason, the President has the right to bring to bear against any dissenter the force of the CIA, the force of the FBI, illegally, that a person is subject to having his mail opened or his house broken into or his phone tapped because he dissents. It is not at all clear from the evidence before this committee that the Huston plan was not carried out.

And let us look at the leaks that everybody has talked about. Did they justify the ends we have seen? Does anybody argue that the wiretap of Joseph Kraft by a private operative on behalf of the White House is constitutional or legal and that the President can put his im-

primatur on that? Does anybody argue that that is within the bounds of the Constitution?

I can't believe it.

And what about the Ellsberg case? Perhaps the President didn't authorize the burglary in the first place but according to Ehrlichman he ratified it afterward. If it were such a horrendous crime in the President's eyes, then why didn't he expose the people who were responsible to the criminal authorities? No, he covered it up. And he said that Ehrlichman, who has since been convicted for that break-in, or being involved in that, was one of the two finest public servants he had ever known.

And what about the Internal Revenue Service? The 575 names of political opponents of this administration it turned over? The President clearly approved that in a conversation of September 15, and we have his words. He didn't expose these people. He didn't throw Halde- man out of his office. He didn't throw Dean out of his office. At a later date he said, "Do you need any more help with IRS?" And Mr. Thrower, the Commissioner of Internal Revenue Service, submitted an affidavit to this committee in which he said there was a White House effort to try to make administrative changes which could create a personal police force out of the Alcohol, Tobacco and Fire Arms part of the Internal Revenue Service.

What we have seen here is an attempt by this administration with the imprimatur of this President to bring retribution against those who seek to oppose the administration. And how many of us have not quarreled with Presidents in the past, Democrats or Republicans, over agricultural policy or environmental policy or foreign policy or whatever. Does that give any President the license to burglarize our home, to wiretap our phones, to open our mail?

I submit that if it does, we have gone down the long road to tyranny and that the blessings of liberty that we formed this Constitution 200 years ago to preserve will vanish very quickly.

I would like to remind my colleagues that under the Constitution of the United States we in the House of Representatives through the power of impeachment have been given the duty to preserve this Constitution and to preserve the blessings of liberty. And for that reason I feel that we are compelled to approve this article of impeachment.

Thank you, Mr. Chairman.

The CHAIRMAN. The time of the lady from New York has expired. I recognize the gentleman from Virginia, Mr. Butler.

Mr. BUTLER. Mr. Chairman, I yield my time to the gentleman from Maryland, Mr. Hogan.

Mr. HOGAN. I thank the gentleman from Virginia.

A number of our colleagues have said that the evidence presented today fails to support the impeachable offenses. I know that they do not want to give the erroneous impression that they have been involved today or in any of these recent deliberations in a presentation of evidence. What we have been involved in is debating amendments to these articles of impeachment. The evidentiary presentation took 10 weeks of our time after months of staff work. So we shouldn't give the impression that what we have been presenting is evidence. But what we have seen is the results of all of that labor and having all 38

members of this committee study that evidence for 10 weeks in long sessions day after day, hour after hour, an overwhelming majority of this committee can subscribe to the idea that that evidence supports these articles of impeachment.

The CHAIRMAN. The gentleman has time remaining.

Mr. BUTLER. I yield back the balance of my time.

The CHAIRMAN. I recognize the gentleman from Utah, Mr. Owens.

Mr. OWENS. Thank you, Mr. Chairman.

Article I of impeachment focused on many instances on one immense abuse, the coverup of the Watergate break-in. In contrast, article II is a collection of separate individual very serious abuses of the power of the Presidency. These are charges that the President used his power or knowingly permitted his power to be used to do something unconstitutional, illegal, immoral, or to do something legal but important political or nonlegitimate purposes.

This is not a grab bag of Presidential actions which a majority of the committee thinks is unwise or bad or contrary to our national interest. These are what they must be to be impeachable, acts which would be clear violations of the standard of conduct for any President, violations which are so grave and are such an abuse of the Presidential trust that the public well-being requires that they be corrected.

There are other serious offenses of the President which do not in my opinion raise to the level of impeachment abilities. On the basis of evidence before us I do not believe that the allegations of bribery, for example, in the ITT case or the milk case, have been sustained. But each one of the abuses contained in article II is adequate in itself to sustain impeachment in my opinion.

These instances of Presidential abuse center around the violation of the guarantees of civil liberties contained in the Bill of Rights; namely, the right to be free from Government interference in his privacy, his home, his letters and his belongings, and his conversations.

I would hope that the President is watching this proceeding tonight. I feel that I have grown to know him intimately over the past 8 months. We who are about to vote on this new article of impeachment do not wish him the slightest personal harm. We recognize that there is tragedy involved. There is only good will on this committee and I believe that every member acts tonight in accordance with his or her conscience and in pursuit of a constitutional obligation, and I would hope that he would believe that.

This article of impeachment does not attempt to apply new standards to this President. We apply old standards which everyone knows of through the impeachment process. And impeachment is the only remedy for the abuses which article II proposes to correct.

Some of them are not criminal abuses and even if they were criminal, the President when sitting is beyond criminal process. Probably the principal reason the Framers included the impeachment power in the Constitution was because they saw that the only remedy against a President for the unlawful enlargement of the executive power and the encroachment upon individual liberties was through this type of stern accountability, the only remedy. By passing these articles of impeachment we set an example. It is a fair example because we apply only the most fundamental and basic standards of which any President should be aware. And it is an example to future Presidents.

and to all who hold civil authority in this country that the Congress even to the exercise of its impeachment capability will stand against the abuse of power and the invasion of civil liberties which would undermine our Constitution or the rights and the dignity of the individual.

We should not forget that the history of liberty in the world is very short, the history of tyranny is very long and the principal source of oppression has always been the unrestrained power of the state.

Mr. HUNGATE. Mr. Chairman, I ask unanimous consent to consider and adopt en bloc technical amendments I have at the desk and they have been distributed to each member.

I ask unanimous consent, Mr. Chairman.

The CHAIRMAN. Does the gentleman from Missouri ask unanimous consent that certain technical amendments be adopted?

Mr. HUNGATE. Yes. Mr. Chairman, I might state this is on page 2. Page 2, on line 4, page 2, we strike out a comma, following the word "directing," and at the bottom of the page, fourth line from the bottom on page 2, you insert a comma immediately before "which." And, Mr. Chairman, on page 3, the word "misused" is misspelled, "misued." Correct the spelling.

The CHAIRMAN. The gentleman has read the amendment. Is there objection?

Without objection, the technical amendments are adopted.

Mr. HUNGATE. Mr. Chairman?

The CHAIRMAN. Mr. Hungate.

Mr. HUNGATE. I move the previous question.

The CHAIRMAN. The question now occurs on the adoption of the Hungate substitute as amended. All those in favor of the Hungate substitute as amended please signify by saying aye.

[Chorus of "ayes."]

The CHAIRMAN. All of those opposed.

[Chorus of "noes."]

The CHAIRMAN. The ayes have it.

Mr. SANDMAN. Rollcall.

The CHAIRMAN. A call of the roll is demanded and the rollcall is ordered and the clerk will call the roll. All those in favor of the Hungate substitute, as amended, please signify by saying aye. All those opposed, no.

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. Aye.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.

Mr. CONYERS. Aye.

The CLERK. Mr. Eilberg.

Mr. EILBERG. Aye.

The CLERK. Mr. Waldie.

Mr. WALDIE. Aye.  
 The CLERK. Mr. Flowers.  
 Mr. FLOWERS. Aye.  
 The CLERK. Mr. Mann.  
 Mr. MANN. Aye.  
 The CLERK. Mr. Sarbanes.  
 Mr. SARBANES. Aye.  
 The CLERK. Mr. Seiberling.  
 Mr. SEIBERLING. Aye.  
 The CLERK. Mr. Danielson.  
 Mr. DANIELSON. Aye.  
 The CLERK. Mr. Drinan.  
 Mr. DRINAN. Aye.  
 The CLERK. Mr. Rangel.  
 Mr. RANGEL. Aye.  
 The CLERK. Ms. Jordan.  
 Ms. JORDAN. Aye.  
 The CLERK. Mr. Thornton.  
 Mr. THORNTON. Aye.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. Aye.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. Aye.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. Aye.  
 The CLERK. Mr. Hutchinson.  
 Mr. HUTCHINSON. No.  
 The CLERK. Mr. McClory.  
 Mr. MCCLORY. Aye.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. No.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. No.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. Aye.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. No.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. No.  
 The CLERK. Mr. Fish.  
 Mr. FISH. Aye.  
 The CLERK. Mr. Mayne.  
 Mr. MAYNE. No.  
 The CLERK. Mr. Hogan.  
 Mr. HOGAN. Aye.  
 The CLERK. Mr. Butler.  
 Mr. BUTLER. Aye.  
 The CLERK. Mr. Cohen.  
 Mr. COHEN. Aye.  
 The CLERK. Mr. Lott.  
 Mr. LOTT. No.  
 The CLERK. Mr. Froehlich.  
 Mr. FROEHLICH. Aye.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. No.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. No.

The CLERK. Mr. Latta.

Mr. LATTA. No.

The CLERK. Mr. Rodino.

The CHAIRMAN. Aye.

The CLERK. Mr. Chairman?

The CHAIRMAN. The clerk will report.

The CLERK. Twenty-eight members have voted aye, 10 members have voted no.

The CHAIRMAN. And the substitute, as amended, is agreed to.

The question now occurs on the adoption of the article II of the Donohue resolution as amended by the Hungate substitute. All those in favor, please signify by saying aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed.

[Chorus of "noes."]

The CHAIRMAN. The ayes appear to have it.

Mr. SANDMAN. Mr. Chairman, I demand a rollcall.

The CHAIRMAN. The gentleman from New Jersey demands a call of the roll and call of the roll is ordered and the clerk will call the roll. All those in favor of the adoption of the article II of the Donohue resolution as amended by the Hungate substitute please signify by saying aye. All those opposed, no.

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. Aye.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.

Mr. CONYERS. Aye.

The CLERK. Mr. Eilberg.

Mr. EILBERG. Aye.

The CLERK. Mr. Waldie.

Mr. WALDIE. Aye.

The CLERK. Mr. Flowers.

Mr. FLOWERS. Aye.

The CLERK. Mr. Mann.

Mr. MANN. Aye.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. Aye.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. Aye.

The CLERK. Mr. Danielson.

Mr. DANIELSON. Aye.

The CLERK. Mr. Drinan.  
 Mr. DRINAN. Aye.  
 The CLERK. Mr. Rangel.  
 Mr. RANGEL. Aye.  
 The CLERK. Ms. Jordan.  
 Ms. JORDAN. Aye.  
 The CLERK. Mr. Thornton.  
 Mr. THORNTON. Aye.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. Aye.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. Aye.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. Aye.  
 The CLERK. Mr. Hutchinson.  
 Mr. HUTCHINSON. No.  
 The CLERK. Mr. McClory.  
 Mr. MCCLORY. Aye.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. No.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. No.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. Aye.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. No.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. No.  
 The CLERK. Mr. Fish.  
 Mr. FISH. Aye.  
 The CLERK. Mr. Mayne.  
 Mr. MAYNE. No.  
 The CLERK. Mr. Hogan.  
 Mr. HOGAN. Aye.  
 The CLERK. Mr. Butler.  
 Mr. BUTLER. Aye.  
 The CLERK. Mr. Cohen.  
 Mr. COHEN. Aye.  
 The CLERK. Mr. Lott.  
 Mr. LOTT. No.  
 The CLERK. Mr. Froehlich.  
 Mr. FROEHLICH. Aye.  
 The CLERK. Mr. Moorhead.  
 Mr. MOORHEAD. No.  
 The CLERK. Mr. Maraziti.  
 Mr. MARAZITI. No.  
 The CLERK. Mr. Latta.  
 Mr. LATTA. No.  
 The CLERK. Mr. Rodino.  
 The CHAIRMAN. Aye.  
 The CLERK. Mr. Chairman?  
 The CHAIRMAN. The clerk will report.



The CLERK. Twenty-eight members have voted aye, 10 members have voted no.

The CHAIRMAN. And the resolution is agreed to and pursuant to the procedural resolution, article II, as amended, is adopted and will be reported to the House.

The committee will recess until 10:30 tomorrow morning.

[Whereupon, at 11:25 p.m., the committee was recessed, to reconvene on Tuesday, July 30, 1974, at 10:30 a.m.]



## DEBATE ON ARTICLES OF IMPEACHMENT

### Business Session, Impeachment Inquiry

TUESDAY, JULY 30, 1974

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The committee met, pursuant to recess, at 11:05 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino, Donohue, Brooks, Kastenmeier, Edwards, Hungate, Conyers, Eilberg, Waldie, Flowers, Mann, Sarbanes, Seiberling, Danielson, Drinan, Rangel, Jordan, Thornton, Holtzman, Owens, Mezvinsky, Hutchinson, McClory, Smith, Sandman, Railsback, Wiggins, Dennis, Fish, Mayne, Hogan, Butler, Cohen, Lott, Froehlich, Moorhead, Maraziti, and Latta.

Impeachment inquiry staff present: John Doar, special counsel; Samuel Garrison III, minority counsel; Albert E. Jenner, Jr., senior associate special counsel; Bernard Nussbaum, senior associate special counsel; and Richard Cates, senior associate special counsel.

Committee staff present: Jerome M. Ziefman, general counsel; Garner J. Cline, associate general counsel; Alan A. Parker, counsel; Daniel L. Cohen, counsel; William P. Dixon, counsel; Arden B. Schell, counsel; Franklin G. Polk, associate counsel; Thomas E. Mooney, associate counsel; Michael W. Blommer, associate counsel.

The CHAIRMAN. The committee will come to order.

I recognize the gentleman from Illinois, Mr. McClory.

Mr. McCLORY. Mr. Chairman, I have an amendment in the form of article III at the clerk's desk.

The CHAIRMAN. The clerk will read the article.

The CLERK [reading]:

Immediately after article II, add the following additional article.

Article III.

In his conduct of the office of President of the United States, Richard M. Nixon, contrary to his oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has failed without lawful cause or excuse to produce papers and things as directed by duly authorized subpoenas issued by the Committee on the Judiciary of the House of Representatives on April 11, 1974, May 15, 1974, May 30, 1974, and June 24, 1974, and willfully disobeyed such subpoenas. The subpoenaed papers and things were deemed necessary by the committee to its inquiry, authorized and directed by resolution of the House of Representatives to determine whether sufficient grounds exist to impeach Richard M. Nixon, President of the United States. In refusing to produce these papers and things, he has acted in derogation of the power of impeachment, vested solely in the House of Representatives by the Constitution of the United States.

In all of this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional Government, to the great prejudice of the cause of law and justice, and to the manifest injury of the people of the United States.

Wherefore, Richard M. Nixon by such conduct, warrants impeachment and trial, and removal from office.

The CHAIRMAN. The gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, preliminary to presenting a discussion in support of my—of the proposed article III, I ask unanimous consent that all debate on article III, including the consideration of any amendments thereto, be limited to a period not to exceed 3 hours. Debate on any amendment shall not exceed 30 minutes, divided equally between the proponents and opponents of the amendment.

The CHAIRMAN. Is there objection?

Mr. LATTI. Yes, Mr. Chairman. Reserving the right to object—

The CHAIRMAN. The gentleman from Ohio.

Mr. LATTI. Mr. Chairman, I think every member on this committee is fully familiar with this article of impeachment and made up his mind and I think 3 hours' debate time is much too long. I would hope that the gentleman would consider this and reduce that amount of time.

The CHAIRMAN. Might I advise the gentleman from Ohio that the unanimous consent request is to the effect that debate not exceed 3 hours. It is not necessary that we consume 3 hours.

Mr. LATTI. By the same token, Mr. Chairman, I could consume 3 hours.

The CHAIRMAN. But any member of the committee may move the question after consideration of any amendments and that period could come prior to the 3-hour limitation. At any time prior to that.

The gentleman from Illinois. If there is no objection—

Mr. LATTI. Objection, Mr. Chairman.

The CHAIRMAN. Objection is heard.

Mr. BROOKS. Mr. Chairman?

Mr. RAILSBACK. Mr. Chairman?

Mr. Chairman, I agree with what the gentleman from Ohio said. This particular issue has been debated at length. I think really 3 hours is too long. I wonder if we cannot cut it down and make it 1½ or 2 hours.

The CHAIRMAN. Well, does the gentleman from Illinois revise his unanimous consent request?

Mr. McCLORY. Mr. Chairman, I am not interested in prolonging debate on this. If we do not adopt this unanimous consent proposal, then, of course, we would be operating under the 5-minute rule as I understand, which would give all 38 members 5 minutes to discuss the article in general and then we would be at the amendatory stage which, of course, could further prolong this. I do not like to limit or restrict any person's opportunity to speak on this. If it is more acceptable, I would revise my unanimous consent request to limit the time not to exceed 2 hours.

Mr. LATTI. Mr. Chairman?

The CHAIRMAN. Is objection heard?

Mr. LATTI. Mr. Chairman, reserving the right to object, and I shall not object, I want to thank the gentleman from Illinois for reducing the time and I think it is a wise move.

The CHAIRMAN. Without objection, it is so ordered.

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. The policy will be again that perfecting amendments will be recognized in order of precedence.

Mr. McCLORY. Mr. Chairman, if there is no objection, I would like the unanimous consent to proceed for 10 minutes.

Mr. DENNIS. Mr. Chairman, reserving the right to object, if we have only 2 hours, I think 10 minutes for the author may be a little bit excessive.

The CHAIRMAN. Is the gentleman objecting?

Mr. DENNIS. Oh, I will not object, but I hope the Chair will recognize me for about 2 minutes' time.

The CHAIRMAN. Without objection, it is so ordered. The gentleman is recognized for 10 minutes.

Mr. McCLORY. Thank you, Mr. Chairman.

In presenting this article, article III, it seems to me we are getting at something very basic and very fundamental insofar as our entire impeachment proceeding and inquiry is concerned. I think it is well for us to recall that the Constitution rests in us, the House of Representatives, and us, the House Judiciary Committee which has been designated by the House of Representatives to conduct this inquiry, with the sole power of impeachment. Now, implicit in that sole power of impeachment is the authority to make this inquiry, to investigate the office which is under investigation. In this case it happens to be the President of the United States. There have been a total, I believe, of 13 impeachments in the House of Representatives, and a total of 69 cases which have been referred and where there has been some action taken of one kind or another with regard to the subject of impeachment.

Now, implicit in this authority to conduct an impeachment inquiry is the authority to investigate the actions that take place in that office. If we are without that authority, or if the respondent has the right to determine for himself or herself to what extent the investigation shall be carried on, of course, we do not have the sole power of impeachment. Someone else is impinging upon our authority. So it seems to me implicit in this authority that we have a broad authority to conduct an investigative inquiry.

This has been recognized in our proceeding, as a matter of fact, in that the House of Representatives delegated to us the authority to issue subpoenas relevant and necessary to our inquiry, and as a result of that, we have issued, eight subpoenas to the President requesting information.

Now, prior to the time that we issued these subpoenas we directed letters to the President requesting information and these letters requesting information were sent by the chairman after consultation with the ranking minority member. In other words, we have the joint authority and the joint expression of Republicans and Democrats with respect to the information that we have requested.

Now, the President, of course, did not respond to the requests that we directed to him in the course of our letters, and so we exercised the authority which was granted to us by the House resolution to issue subpoenas.

Now, with respect to the subpoenas the vote was 33 to 3 on one, 37 to 1 on two, and 34 to 4 on the fourth one.

In other words, the action of the committee was bipartisan and it was overwhelming that we wanted this material, that we wanted this response to the requests for information which we felt were necessary and relevant to our inquiry.

I recall when the President came before the joint session of the Congress in January he said words to the effect that he wanted to provide full cooperation with the Judiciary Committee consistent only with the operation of his office. Now, I suppose that qualification was more significant than it seemed to be at that time because the words that came across to us were full cooperation with the House Judiciary Committee.

Now, where is that full cooperation with the House Judiciary Committee? Well, we have had some tapes and we have had some transcripts. The transcripts we got, of course, were transcripts that were issued to the public, not issued in response to this committee, but publicized, the edited transcripts as they are called, or the White House transcripts. And the tapes, where did they come from? Well, they did not come from the White House, they came from the grand jury and they came from the Special Prosecutor's office. As a matter of fact, of the 147 tapes that we requested, we did not receive a single one from the White House.

Now, if you ever saw an example of stonewalling, the prime example of stonewalling is right there, and now that is an expression that comes out of the White House, but where is the stonewalling occurring? It is occurring with regard to the Congress of the United States and with regard to this committee.

Now, if we do have the sole power of impeachment, and if we do have the authority to investigate, then it is important of course, that we do receive the kind of cooperation that I thought would be forthcoming. I have done everything I could to try to impress upon the White House the importance of this cooperation.

Now, the President has raised the question of confidentiality of the taped material, and so we suggested that this material would be received not only under our rules of strict confidentiality, but that the President himself, or the President's counsel could participate with our counsel in screening out national security information. But, the President's position has been that he should be the sole arbiter of what he should turn over, and what he should not turn over.

Well, if he is the sole arbiter, then how in the world could we conduct a thorough and a complete and fair investigation? Well, we just could not.

Now, since we began this inquiry, of course, the President has been involved in litigation, and the case went to the Supreme Court. And he made the same kind of a plea to the district court that he has made to us, that he should have the sole right, that there was an absolute executive privilege which prevailed, and that he had the absolute right to determine what he would turn over and what he would not turn over.

Now, that doctrine was knocked down. That was knocked down effectively insofar as the court was concerned.

Now, it is true that were not involved in that proceeding. Some people thought we should have been, and perhaps we should have

been. But, anyway, the doctrine was knocked down and the doctrine of absolute executive privilege has fallen. As a matter of fact, I have felt, and a number of my colleagues here on the committee have felt that the doctrine of executive privilege has no application whatsoever in an impeachment inquiry, because it would be impossible for the President or any other person being investigated to have the right and privilege to determine what was to be submitted in the course of the investigation and what was not to be submitted. In other words, we would be falling foul of the maxim enunciated by Lord Coke that a person cannot be the judge of his own cause, and consequently, that doctrine cannot possibly prevail. Otherwise our authority would be frustrated completely.

Now, I say this is fundamental and basic to our inquiry and I mean precisely that. I mean that if we are going to set a standard and a guide for future Congresses, for future impeachment inquiries, there is no more important standard and guide than the one that we will determine with respect to article III, because if we refuse to recommend impeachment of the President on the basis of this article III, if we refuse to recommend that the President should be impeached because of his defiance of the Congress with respect to the subpoenas that we have issued, the future respondents will be in the position where they can determine themselves what they are going to provide in an impeachment inquiry and what they are not going to provide, and this would be particularly so in the case of an inquiry directed toward the President of the United States.

So, it not only affects this President but future Presidents. And it might be that a Republican Congress would be investigating in an impeachment inquiry a Democratic President in a future instance. I hope we do not have any more impeachments, but in the case we did, the precedent that we might establish here would be effective then.

So, it seems to me that there is no greater responsibility which befalls us at this time than that to determine this question of the President's responsibility with respect to our subpoenas.

Now, earlier I had the thought and I set it forth publicly that I felt that when the President did not respond to our subpoenas that we should take action to hold the President in contempt, or that we should censure the President, or we should have a resolution of inquiry, to get some action on the part of the House. I was discouraged in that respect. I was discouraged from leaders on both sides of the aisle, I might say, and I emphasized at that time that while I was withholding the action that I intended to take then, that I would face a very serious dilemma at this stage, and so while we did not take action under the contempt authority that we had, which in a sense is quite difficult to enforce and to apply.

Nevertheless we are now faced with this decision at this hour of decision, with determining whether or not the President is or is not in contempt of Congress, and if he is whether he has denied the Congress to the extent that we should recommend his impeachment. I think that this is an important article. It is a case where the Congress itself is pitted against the Executive. We have this challenge on the part of the Executive with respect to our authority, and if we think of the whole process of impeachment, let us recognize that this

is a power which is preeminent, which makes the Congress of the United States dominant with respect to the three separate and co-equal branches of government. It bridges the separation of powers and gives us and reposes in us the responsibility to fulfill this mission. And the only way we can do it is through acting favorably on article III.

Thank you, Mr. Chairman.

The CHAIRMAN. The time of the gentleman has expired.

I recognize the gentleman from Arkansas, Mr. Thornton.

Mr. THORNTON. Thank you, Mr. Chairman. I have a perfecting amendment at the desk.

The CHAIRMAN. The clerk will read the amendment.

The CLERK [reading]:

Amendment by Mr. Thornton.

In the first paragraph strike out the material commencing with "The subpoenaed" down through "Constitution of the United States." and insert in lieu thereof the following:

The subpoenaed papers and things were deemed necessary by the committee in order to resolve by direct evidence fundamental, factual questions relating to Presidential direction, knowledge or approval of actions demonstrated by other evidence to be substantial grounds for impeachment of the President. In refusing to produce these papers and things Richard M. Nixon, substituting his judgment as to what materials were necessary for the inquiry, interposed the powers of the Presidency against the lawful subpoenas of the House of Representatives, thereby assuming to himself functions and judgments necessary to the exercise of the sole power of impeachment vested by the Constitution in the House of Representatives.

The CHAIRMAN. The gentleman is recognized for 5 minutes.

Mr. THORNTON. Thank you, Mr. Chairman.

Members of the committee, the matters which have been raised by the proposed article by the gentleman from Illinois deserve our very serious reflection and thought. I have previously expressed my own views that the failure to comply with subpoenas does constitute a grave offense, and I have also expressed that in my view that offense should have been included within one of the substantive articles which has been previously presented and adopted by his committee.

I think it could have been considered as an abuse of power, or even more logically as an obstruction of justice in interfering with this committee's exercise of its constitutional duty.

However, that did not occur during the course of the adoption of the articles which have been presented, and I do not see Mr. Doar at the table, but I would like to direct the attention of Mr. Jenner, if I may, to paragraph (4) of article I, as amended by the gentleman from California, Mr. Danielson, to include within that article a failure to produce materials required by congressional committees. Are you familiar with that article as amended?

Mr. JENNER. Yes, I am, Mr. Thornton.

Mr. THORNTON. In your view, would that article permit the introduction of evidence with respect to the subpoenas which have been issued by this committee?

Mr. JENNER. I think that provision of article I would not prevent the introduction of evidence in the area. But the problem presented is whether that it is sufficiently specific in a charging sense to be able to assert that the failure to respond to the subpoena is itself an impeachable offense.



Mr. THORNTON. Well, based on that answer then, it seems that we are faced with the very real issue of giving a proper consideration to the failure of the President to comply with our subpoenas.

I think that it is important that in approaching this we should be aware that here we are dealing with directly and intimately a matter which can have a bearing upon the constitutional basis of power between the three departments of Government, and that what we may do with regard to the adoption of this article is going to in one way or another possibly affect the future of those balances.

If we do nothing, we may indeed limit the authority of the legislative branch to make a proper inquiry as to the misconduct under the impeachment provision of individuals in either the executive or judicial branches of Government. If, on the other hand we draw too broadly upon our power and authority, we might distort the balance of power to give the legislative branch under its impeachment clause the authority to constitutionally investigate and determine the actions of members of the executive or judicial branches of Government.

For this reason it seems to me that if this article is to be given consideration, it must be sharply limited and defined to the presence of offenses established by the other evidence which might rise to the level of impeachable offenses. And that is the purpose and effect of the perfecting amendment which I have offered and which I ask the members to adopt, because it seems to me that we are confronted with the very serious problem in Presidential noncompliance with our subpoenas, but that we must draw carefully limiting language to prevent a distortion of the balance of power between the executive and the legislative branch.

I yield back the balance of my time.

The CHAIRMAN. The time of the gentleman has expired.

Mr. FROELICH. Mr. Chairman?

The CHAIRMAN. The gentleman from Wisconsin, Mr. Froehlich.

Mr. FROELICH. Thank you, Mr. Chairman.

Mr. Chairman, members of the committee, and the gentleman from Arkansas, no matter how sharply limited and defined you try to draw this article, this is clearly an indication of alleged absolute power of the President versus the alleged absolute power of the Congress, a classic case in separation of powers.

The President claims constitutional and historic tradition of executive privilege and the Congress claims executive—exclusive power of impeachment. What reasonable men would not properly place this impasse before the third branch, the courts, for final arbitration and decision in both in the interests of obtaining information or substantiating the President's compliance or noncompliance under the Constitution. Clearly, the President has asserted his constitutional responsibility vested in him in article II to protect the office of the Presidency against the infringements of other branches. This argument was also advanced by the President in responding to subpoenas sought by the Special Prosecutor. In fact, the President used the courts all the way up to and including the Supreme Court to advance his position. What the Supreme Court said in the *United States v. Nixon* in response to the President's argument is vitally important for this committee to understand. It said that in the performance

of assigned constitutional duties, each branch of the Government must initially interpret the Constitution and the interpretation of its powers by any branch is due respect from the other.

It further stated that in the last analysis it is emphatically the province and duty of the judicial department to say what the law is. Thus, the Court said, in essence, that the President was absolutely correct in defending his interpretation of the Constitution but that the Supreme Court's decision with respect to claim of executive privilege was dispositive in the last analysis. It then held that although the courts will afford the utmost deference in the Presidential need for confidentiality when the claim of privilege is based merely on generalized interest in confidentiality the assertion of the privilege must yield to a demonstrated specific need for evidence in a pending criminal trial, that is, the tapes must be given to the district court for in camera inspection.

The decision of Supreme Court did not say that executive privilege was not a viable doctrine. On the contrary, it said that certain powers and privileges flow from the nature of enumerated powers, the protection of confidentiality of Presidential communication has similar constitutional underpinnings. It also said the privilege is fundamental to the operation of government and rooted in the separation of powers under the Constitution. Thus, the Supreme Court has stated emphatically that executive privilege is a constitutional privilege available to the President.

Now, whenever a situation where members of this committee, like Mr. Jaworski, are asserting the right to have certain information because under article I the House shall have the sole power of impeachment, but that clause says nothing about a President being powerless to assert what he understands to be his constitutional responsibility to protect his office.

Therefore, at best we have two great branches of government involved in a stalemate, both arguing the Constitution. As the Supreme Court said, it is emphatically the province and duty of the Supreme Court to say what the law is. So if the members of this committee believe their position, they should have gone to court and asked the court to say what the law is.

The committee has every right to assert its understanding of the Constitution but it is not the final arbitrator. It is not the judge and jury. Our Constitution gives the courts the responsibility to interpret the law and I would remind the committee that the President has responded to have judicial subpoena served upon him and has recently stated he intends to fully comply with the Supreme Court rulings. So there is a remedy available to test these theories of constitutional authority to get information and that is to use the courts, not to attempt to impeach a President for defending what he believes to be his duty under the Constitution.

Thank you, Mr. Chairman.

Mr. SEIBERLING. Mr. Chairman.

The CHAIRMAN. I recognize the gentleman from Ohio, Mr. Seiberling.

Mr. SEIBERLING. Thank you, Mr. Chairman.

I support the Thornton substitute. I also support the McClory original article, though I think the substitute is an improvement. And

the reason it is an improvement is because it makes it even more clear that we are not stating a broad power to obtain Presidential documents in any type of congressional proceeding but we are limiting it to an impeachment proceeding which is what we have before us.

Now, it seems to me that no one can dispute that without the power to investigate, the impeachment power is meaningless. It is inconceivable that the Founding Fathers believed that a subject of an impeachment inquiry should be able to withhold relevant evidence from impeachment proceeding. Certain privileges founded in our concept of due process I believe are applicable even in impeachment proceedings, but certainly so-called executive privilege is not one of them.

Impeachment is the express exception in the Constitution to the so-called separation of powers doctrine. The very purpose of the impeachment power is to discover and remove those civil officers who have committed certain serious offenses against the state. Stonewalling tactics have no legitimate place in procedures which are designed to find the truth as rapidly and as completely as possible.

Now, if this were a court case the question of privilege would be one for the judge of the court to decide but here, in the first instance, at least, the committee is the judge, acting for the full House, and the House thereafter, and if the House votes articles of impeachment, then the Senate is the ultimate court of appeal in this matter. And it is the Senate that can decide what the issues of law and fact are.

Now, I would just like to point out that every time this has come up in the past, Presidents starting with George Washington and going through to Franklin Roosevelt have conceded that in an impeachment inquiry the House can obtain whatever information the executive branch possesses. I would just like to read you what a House committee said back in 1843 when President Tyler, after initially objecting, finally turned over to the committee some materials that they had requested.

If the House possesses the power to impeach, it must likewise possess all the incidents of that power—the power to compel the attendance of all witnesses and the production of all such papers as may be considered necessary to prove the charges on which impeachment is founded. If it did not, the power of impeachment conferred upon it by the Constitution would be nugatory. It could not exercise it with effect.

Three years later President Polk made this statement:

It may be alleged that the power of impeachment belongs to the House of Representatives, and that, with a view to the exercise of this power, that House has the right to investigate the conduct of all public officers under the Government. This is cheerfully admitted. In such a case the safety of the Republic would be the supreme law, and the power of the House in the pursuit of this object would penetrate into the most secret recesses of the Executive Department. It could command the attendance of any and every agent of Government, and compel them to produce all papers, public or private, official or unofficial, and to testify on oath to all facts within their knowledge. . . . If the House of Representatives, as the grand inquest of the nation, should at any time have reason to believe that there has been malversation in office by an improper use or application of the public money by a public officer, and should think proper to institute an inquiry into the matter, all the archives and papers of the Executive Departments, public or private, would be subject to inspection and control of a Committee of their body and every facility in the power of the Executive be afforded to enable them to prosecute the investigation.

Now, the Supreme Court last week held that in a criminal case, the President's power to withhold documents, his power of executive privilege, must yield to the legitimate requirements of proof in a court case. If that is true in a criminal case involving third parties, how much more so is it true in an impeachment investigation, investigating the very conduct of the President himself; Lord Coke has said, "This King cannot be judge of his own cause," and yet if a President can withhold the key evidence from a committee investigating his conduct of his office, he in effect has become the judge in his own cause.

We do not need to submit this to court. We have the power as acknowledged by Presidents in the past and we should exercise that power, and the only effective way we can exercise it, when a President refuses to respond to our subpoenas, is to include that as one of the impeachable offenses and give the Senate, as the court of ultimate resort, the right to pass on that offense.

The CHAIRMAN. The gentleman has consumed 5 minutes.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. I recognize the gentleman from California, Mr. Wiggins.

Mr. WIGGINS. I thank the chairman for yielding.

Mr. Chairman, I rise in opposition to the amendment. The maker of the main position, you see, has dug himself a hole and the purpose of the amendment is to help extricate himself from that illogical position. The situation is this. This committee yesterday and the day before viewed the evidence and found it, I am told, overwhelming. I believe our good counsel called it a surfeit of evidence. I take that to be a good bit, Mr. Doar. And voted to impeach and remove the President based thereon, found it to be clear and convincing.

And now we seek to impeach him because he did not give us enough evidence to do the job.

Now, I would think that you have an option here, if you wish. You can frankly acknowledge the inadequacy of the evidence to impeach the President and perhaps impeach him for failing to provide that evidence, or on the other hand, you can vote that the evidence is sufficient to impeach the President as you have done and to recognize that the matters subpoenaed were not in fact necessary to the proper conduct of this committee's inquiry.

That word "necessary" is important, you understand, because that word is found in the authorizing resolution which gives us the power to issue subpoenas at all. We made a tentative judgment as to necessity when we authorized the subpoenas, but by your vote yesterday and the day before, you conclusively demonstrated that it was not necessary.

Mr. McCLORY. Would the gentleman yield?

Mr. WIGGINS. I will in a moment but not until I am prepared to do so.

Mr. McCLORY. All right.

Mr. WIGGINS. Now, look at the Thornton amendment in terms of what it does to Mr. McClory's amendment. Mr. McClory's amendment says that the matters were necessary, deemed necessary, to determine whether sufficient grounds exist to impeach Richard Nixon. Well, manifestly that is not so or your votes were improper. Recognizing that, I suspect my friend from Arkansas has proposed a perfecting

amendment in which he says there were conflicts in the evidence and the subpoenaed material was desirable, perhaps not necessary, but desirable, to resolve the conflicts.

Well, that may be so, but you understand your vote yesterday and the day before indicated a positive resolution of those conflicts. They no longer are unresolved.

Now, if logic and common sense still has any place to play in these proceedings, I would think that we had an election. We elect to impeach on the basis of the evidence before us or we elect to impeach him for failing to provide that evidence. Those who voted for the first two articles cannot have their cake and eat it, too, and maintain logical consistency by voting for the third, in my opinion. In my opinion, this article is inconsistent with the prior two.

I will be happy to yield to my friend from Illinois.

Mr. McCLORY. I thank the gentleman for yielding. I want to point out I voted against article I which involved a conspiracy charge—obstruction of justice—against the President because of the fact that there was insufficient evidence in the record and the amendment which is offered by the gentleman from Arkansas which I propose to accept would make reference to the kind of evidence that was lacking with respect to the first article. I did not say that there was sufficient evidence to impeach the President on article I. I said there was insufficient evidence.

Mr. WIGGINS. Well, I cannot yield further. And I—

Mr. McCLORY. That is what our need is.

Mr. WIGGINS. Unless my memory failed me the gentleman found by clear and convincing evidence just on yesterday that the President should be impeached and removed from office.

I yield to the gentleman from California.

Mr. WALDIE. I appreciate the gentleman yielding and I think what we are doing in this article as in every article of impeachment is attempting to define by the legislative process, by the impeachment process, if you will, the extent of powers that we will permit Presidents to exercise in the future. It is if you will accept it, a constitutional redefinition of those powers and I think what the author of the resolution and the author of the amendment is saying in this instance, is that future Presidents, if subjected to an impeachment inquiry, will not be permitted to make the determination that this President has sought to make, that he will determine what is relevant to that inquiry.

Mr. WIGGINS. I appreciate the point the gentleman is making. It is a good point. The way to do it is by legislation, not by a bill of attainment.

The CHAIRMAN. The time of the gentleman from California has expired.

Mr. DANIELSON. Will the gentleman yield?

The CHAIRMAN. I recognize the other gentleman from California, Mr. Danielson.

Mr. DANIELSON. Thank you, Mr. Chairman. I support the article offered by the gentleman from Illinois, Mr. McClory, and also the amendment offered by the gentleman from Arkansas, Mr. Thornton. I feel, Mr. Chairman, that it is essential that we resolve this issue of

the subpoenas. The issue has been joined. This committee has issued a number of subpoenas. The President has directly stated that he refuses to obey them and reserves the right to decide what evidence will be presented before us from his office.

The question we have here is very delicate and very finely drawn, but it is critical to the separation and allocation of powers under the Constitution.

The Thornton amendment brings into this article the type of responsible restraint that we need. It limits the impact of this article solely to the function of the Congress under the impeachment clause, our sole power to impeach. This is a basic issue of constitutional separation and allocation of powers. I submit that in resolving this question this committee and the Congress must remember that we have no more right to refuse a jurisdiction which is ours than we have to assume a jurisdiction which is not ours. Nor does the Judicial Department; nor does the executive department. It is for us to make a judgment here and on the floor of the House as to whether we are going to exercise our responsibility and our jurisdiction under the sole power of impeachment.

In the Thornton amendment and the McClory resolution, I submit that we will have met that issue, and I urge that both the amendment and the article be adopted.

Ms. HOLTZMAN. Would the gentleman yield?

Mr. DANIELSON. I would yield to the lady from New York.

Ms. HOLTZMAN. I thank the gentleman for yielding and I would just like to add a few points to his very eloquent statement.

There has been some talk that the failure of the President to comply with the subpoenas wrought no harm, and I would just like to point to the area of the milk inquiry in which we did seek a number of subpoenas and in which the committee in general has come to the conclusion that the evidence has not been sufficient, even though there have been any number of indictments handed down, and some of the conversations that we subpoenaed had to do with these indicted persons.

Second, the argument is the same as was raised yesterday with respect to IRS: That is, an illegal act which does not succeed is somehow less illegal. That reminds me of attempted murder. Do we allow somebody to go free because the victim survives? That is really a doctrine I think we cannot countenance.

And I would like to add one other point, and that has to do with seeking the ruling of the courts. You know, the Founding Fathers placed the impeachment power solely in the hands of the Congress, and they explicitly rejected having the Supreme Court sit as the trier on a conviction. If we were to allow the Supreme Court to decide on the relevance of the evidence in an impeachment inquiry, and if we were to allow the Supreme Court to decide basically what evidence an impeachment inquiry could have, I feel we would be violating the decisions of the Founding Fathers to place the right to inquire for the purposes of impeachment solely in the hands of the Congress. I very strongly support this article and yield back.

Mr. DANIELSON. I thank the lady from New York. And I point out that since the issue has been joined and is before us, we must not retreat from our responsibility, for this action will establish a precedent

which could bind the Congress on this very delicate point for centuries to come.

Mr. SEIBERLING. Would the gentleman yield to me?

Mr. DANIELSON. I yield.

Mr. SEIBERLING. I am a little bit surprised by the argument of the gentleman from California, Mr. Wiggins. Mr. Wiggins is a very, very able lawyer, and he knows in a court trial you are entitled, the parties are entitled to all of the relevant evidence, not enough or barely sufficient to support a particular point of view, but all of the evidence because the more evidence you can get the stronger your case is and the better chance you have of prevailing. That is an argument which I think is so easily disposed of by any lawyer practicing in the courts that I am surprised that he would even make it.

I yield back.

The CHAIRMAN. The time of the gentleman has expired and all time has expired in support of the amendment.

There are 5 minutes remaining in opposition to the amendment.

Mr. OWENS. Mr. Chairman?

Mr. RAILSBACK. Could I move the previous question?

Mr. McCLORY. Mr. Chairman?

The CHAIRMAN. The gentleman from Illinois, Mr. McClory.

Mr. McCLORY. If there is no further request for time in opposition?

Mr. FLOWERS. Mr. Chairman? Mr. Chairman, I would wish to speak to the amendment, to the article. I am not interested in speaking to the amendment.

The CHAIRMAN. The gentleman's time will be reserved.

Mr. FLOWERS. Thank you.

Mr. MOORHEAD. Mr. Chairman?

Mr. OWENS. Mr. Chairman?

The CHAIRMAN. There are 5 minutes remaining in opposition. I will recognize the gentleman from Utah, Mr. Owens.

Mr. OWENS. I know that this amendment obviously is going to pass, but I oppose it. I suppose I feel stronger about this particular article than I do even about the other two that we have passed. I would vote to impeach on this basis on this article even if there were no other evidence. I think that through it all, the power and the process of impeachment must come through unfettered. I think that the ultimate weapon against Presidential tyranny, which is the power of impeachment, should be as clearly bottomed upon principle as it can be, and I think the wording of the McClory amendment is even better than that of the Thornton amendment.

The committee I think must say to the President, to future Presidents, that impeachment will be automatic if the President asserts his unique power to stonewall Congress in a legitimate impeachment inquiry in the future. The President is the only individual in this country who can refuse to honor a subpoena, and that is quite simply because he is the Commander-in-Chief of the Armed Forces and he is the head of the executive branch, and we have not the physical ability to overcome his resistance to a congressional subpoena.

I think the power to compel evidence in an impeachment inquiry must be considered absolute. We do not need to decide this morning

the fifth amendment questions here because the President has not asserted his fifth amendment privileges.

Mr. McClory said in his opening remarks that he hopes that we do not have any more impeachment proceedings, and I am sure we all join him in that, and I think we may not, if out of all of this we set down two basic principles.

One, we set clear standards for impeachment based on fairness, an understandable standard which we are willing to apply for all Presidents.

And two, we say that impeachment power is absolute and is bottomed upon the power to compel documents and evidence, and we do this by saying that a Presidential stonewall against a committee in an impeachment proceeding will bring automatic impeachment then if no other evidence is educed.

Mr. CONYERS. Would the gentleman yield?

Mr. OWENS. Yes; I yield to the gentleman from Illinois.

Mr. McCLORY. I thank the gentleman for yielding, and I certainly feel that the original draft of the article was good. It was in good legalistic and constitutional language. On the other hand, I do not want to oppose this rather elaborating, and argumentative, language that is contained in this amendment.

I think the gentleman from Virginia was seeking recognition.

Mr. OWENS. Well, I would support the amendment of the gentleman from Illinois as amended by the amendment of the gentleman from Arkansas, but it seemed like to me that the principle is more absolute and clear as set down in the original amendment offered by the gentleman.

Mr. McCLORY. I think the gentleman from Virginia would like to be recognized.

Mr. CONYERS. Would the gentleman yield to me?

Mr. OWENS. The gentleman from Virginia.

Mr. BUTLER. I would like to, if I may, direct a question to the gentleman from Arkansas, if you will also yield to me.

Mr. OWENS. I will yield for that purpose.

Mr. BUTLER. I am concerned, and the gentleman knows my reservation about this whole article, I am concerned about this language in your amendment which says in order to resolve by direct evidence fundamental questions relating to Presidential direction, knowledge or approval of actions, and here is the language that I wonder about, "demonstrated by other evidence to be substantial grounds for impeachment of the President."

Now, does that mean that we have a preliminary finding of substantial grounds for impeachment of the President in all of it before we issued a subpoena in all of these areas with reference, for example, let us take the dairy situation?

Mr. THORNTON. It seems, if the gentleman will yield, it seems to me that the requirement is that a threshold level of evidence of substantial offenses which might rise to the level of impeachable offenses must be demonstrated before an impeachment could occur upon a refusal to obey a subpoena, and that is the thought that I have tried to express.

Mr. BUTLER. And clarifying this a little further than you have said here that we have, in fact, made that preliminary determination as to these other matters by this resolution?



Mr. THORNTON. That there is a body of evidence substantial enough to raise serious questions with regard to milk and other matters supporting the issuance of subpoenas of other material as necessary to resolve some of those matters.

Mr. BUTLER. So, it is your thought by this action to remove us from the areas of previous impeachment proceeding the basis for impeachment?

Mr. THORNTON. That is correct, and further to tie it to the kind of evidence which does appear, for example, in article I.

The CHAIRMAN. The time has expired on the amendment. All time has expired on the amendment, and the question now occurs on the amendment offered by the gentleman from Arkansas, Mr. Thornton.

Mr. FLOWERS. Rollcall vote, Mr. Chairman. Rollcall vote.

The CHAIRMAN. All those in favor of the amendment when the roll is called please signify by saying aye, and all those opposed signify by saying no.

The clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. Aye.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. Aye.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.

Mr. CONYERS. No.

The CLERK. Mr. Eilberg.

Mr. EILBERG. Aye.

The CLERK. Mr. Waldie.

Mr. WALDIE. Aye.

The CLERK. Mr. Flowers.

Mr. FLOWERS. No.

The CLERK. Mr. Mann.

Mr. MANN. Aye.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. Aye.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. Aye.

The CLERK. Mr. Danielson.

Mr. DANIELSON. Aye.

The CLERK. Mr. Drinan.

Mr. DRINAN. Aye.

The CLERK. Mr. Rangel.

Mr. RANGEL. Aye.

The CLERK. Ms. Jordan.

Ms. JORDAN. Aye.

The CLERK. Mr. Thornton.

Mr. THORNTON. Aye.

The CLERK. Ms. Holtzman.

Ms. HOLTZMAN. Aye.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. No.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. Aye.  
 The CLERK. Mr. Hutchinson.  
 Mr. HUTCHINSON. Aye.  
 The CLERK. Mr. McClory.  
 Mr. McCLORY. Aye.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. No.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. No.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. No.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. No.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. No.  
 The CLERK. Mr. Fish.  
 Mr. FISH. Aye.  
 The CLERK. Mr. Mayne.  
 Mr. MAYNE. No.  
 The CLERK. Mr. Hogan.  
 Mr. HOGAN. No.  
 The CLERK. Mr. Butler.  
 Mr. BUTLER. Aye.  
 The CLERK. Mr. Cohen.  
 Mr. COHEN. Aye.  
 The CLERK. Mr. Lott.  
 Mr. LOTT. Aye.  
 The CLERK. Mr. Froehlich.  
 Mr. FROEHLICH. No.  
 The CLERK. Mr. Moorhead.  
 Mr. MOORHEAD. No.  
 The CLERK. Mr. Maraziti.  
 Mr. MARAZITI. No.  
 The CLERK. Mr. Latta.  
 Mr. LATTA. No.  
 The CLERK. Mr. Rodino.  
 The CHAIRMAN. Aye.  
 The CLERK. Mr. Chairman?  
 The CHAIRMAN. The clerk will report.  
 The CLERK. Twenty-four members have voted aye, 14 members have voted no.

The CHAIRMAN. And the amendment is agreed to.

There being no further amendments before the desk, the Chair wishes to announce that there is 1 hour and 20 minutes remaining for purposes of debate on the article itself, and the Chair would like an expression of those who wish to speak on the article so that the time may be evenly divided between the opponents and the proponents of

the article. Would those who wish to speak in favor of the article please raise their hands.

[Show of hands.]

The CHAIRMAN. Mr. McClory, Mr. Hogan, Mr. Fish, Mr. Mann, Mr. Danielson, Mr. Drinan, Ms. Jordan, Mr. Thornton, Mr. Conyers, Mr. Eilberg, Mr. Hungate, Mr. Kastenmeier, Mr. Edwards.

All those who wish to speak in opposition?

[Show of hands.]

The CHAIRMAN. Mr. Cohen, Mr. Butler, Mr. Froehlich.

Mr. FROEHLICH. No.

The CHAIRMAN. Mr. Froehlich does not seek recognition.

Mr. Latta, Mr. Hutchinson, Mr. Smith, Mr. Sandman, Mr. Railsback, Mr. Dennis, Mr. Moorhead, and I did announce Mr. Moorhead and Mr. Maraziti.

Mr. FLOWERS. I think we have got a problem posed here. We have 30 minutes of debate on the amendment in which everybody got 5 minutes, and it seems to me like the article is more important and we are going to be restricted to what will not be time to discuss the points that I wish to raise. I wonder if we could reorder these priorities a little bit here this morning. I ask unanimous consent that the time for debate of the article be extended 1 hour.

The CHAIRMAN. There is 1 hour and 20 minutes remaining.

Mr. FLOWERS. I ask unanimous consent that we can extend the time to a total of 2 hours, 1 hour to each side for debate of the article.

Mr. WIGGINS. Reserving the right to object, Mr. Chairman?

The CHAIRMAN. The gentleman will state his reservation.

Mr. WIGGINS. Can I suggest to my friend from Alabama that we defer consideration of his unanimous consent request until we see how we are getting along? I have a feeling that as is the custom in the House, there will be a great deal of yielding to members to develop their arguments more fully. But, if at the end of an hour it is clearly apparent that we have not had an adequate discussion, I certainly would not object to any unanimous consent request at that time.

Mr. FLOWERS. I cannot argue with that.

Mr. WIGGINS. Great.

Mr. HOGAN. Reserving the right to object, the difficulty with that is that if the Chair parcels the time out on the basis of the fixed time limitation at this time, members will not have sufficient time to develop the arguments they want to make.

Mr. FLOWERS. Mr. Chairman, I cannot argue with that either.

The CHAIRMAN. The Chair would like to announce that there are 23 members who have sought recognition, 10 members in opposition and 13 members in support, and probably we could compromise by stating that each of those members, if a unanimous consent request is in order, and it would be in order, that each member be given 5 minutes? Would that suit the gentleman?

Mr. FLOWERS. It seems like the other side has got the advantage there, Mr. Chairman. I would kind of like to restrict it down to—there's not as many of us as there are of them this time, and it's kind of lonesome over here on this article.

Mr. RAILSBACK. Mr. Chairman? Mr. Chairman?

The CHAIRMAN. Mr. Railsback.

Mr. RAILSBACK. I think once again the gentleman from Alabama has shown his good sense. Why don't we just divide the time equally.

Mr. FLOWERS. I thank the gentleman for that comment very much.

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. All one has to do is ask a unanimous consent request that that is in order and the Chair will put the unanimous consent request.

Mr. McCLODY. Mr. Chairman, parliamentary inquiry. My parliamentary inquiry is this: If we are going to abandon our unanimous consent request which I made at the outset, and which was opposed and cut down, it seems to me that we should revert to the rule which we adopted when we began these debates and proceed to provide each member with an opportunity to have 5 minutes to discuss it.

Mr. RAILSBACK. Mr. Chairman, I have a unanimous consent request that each side be given 40 minutes.

Mr. SEIBERLING. Mr. Chairman, reserving the right to object, I think that the suggestion of Mr. McClory makes sense. We started out with the 5-minute rule. I don't know why we should suddenly switch to some other approach. And I just wonder whether there are any really serious objections to that.

The CHAIRMAN. Well, the Chair would like to state that presently, however, the unanimous consent request was adopted without objection, and at the present time the Chair finds itself in the position that there is 1 hour and 20 minutes remaining, and that 1 hour and 20 minutes would be divided, as the rule stated, between the opponents and the proponents.

Now, if that order is to be vacated, then a unanimous consent request to vacate that is in order and we then will proceed.

Mr. FLOWERS. Mr. Chairman?

The CHAIRMAN. Mr. Flowers.

Mr. FLOWERS. I would like to withdraw my unanimous consent request, and reserving the right to object to my friend from Illinois' unanimous consent request, the 1 hour and 20 minutes amounts to 80 minutes, does it not?

The CHAIRMAN. That is correct.

Mr. FLOWERS. Would that not be 40 minutes per side?

Mr. RAILSBACK. Would the gentleman yield?

Mr. FLOWERS. I realize this is the Judiciary Committee and we do not deal in numbers very often, but—

Mr. RAILSBACK. Would the gentleman yield?

Mr. FLOWERS. I certainly yield to my friend.

Mr. RAILSBACK. I think I have decide to withdraw my unanimous consent request.

Mr. FROEHLICH. Mr. Chairman?

The CHAIRMAN. Mr. Froehlich.

Mr. FROEHLICH. I ask unanimous consent that each individual on your list be given 4 minutes.

The CHAIRMAN. Will the gentleman please restate that?

Mr. FROEHLICH. I ask unanimous consent that each individual on your list be given 4 minutes.

Mr. HOGAN. I object, Mr. Chairman. May I be heard on my objection, Mr. Chairman?

The CHAIRMAN. If the gentleman has objected, there is no unanimous consent request, unless the gentleman reserves his right to object.

Mr. HOGAN. I object, Mr. Chairman.

The CHAIRMAN. Objection is heard. We are back to 1 hour and 20 minutes.

The Chair will recognize the gentleman in support of the article, and there are 13 of them listed, and I recognize Mr. Hogan.

Mr. HOGAN. For how long, Mr. Chairman?

The CHAIRMAN. Three minutes.

Mr. HOGAN. Thank you, Mr. Chairman.

Mr. Chairman, I think this is perhaps the most important thing that we have been debating since these current deliberations began. What is at issue here is executive privilege. We know that throughout the Constitution there is the running theme of separation of powers and checks and balances. There are three areas where the President has challenged executive privilege. One is against Congress where there is a legislative purpose, and clearly he has a valid claim to executive privilege in that instance. He claimed it in the instance of the criminal prosecutions, and the Supreme Court has by a unanimous eight to nothing decision rejected his claim.

If the Supreme Court rejected it in that instance, certainly the Supreme Court would reject his claim vis-a-vis the impeachment inquiry by this committee.

I would not have supported this article prior to the Supreme Court decision, but now that we have it, there is no valid claim on the part of the President to ignore our subpoenas.

Now, heretofore I have had many discussions with my colleagues, Mr. Conyers of Michigan notably, who felt so very strongly about this, and at that time the question of executive privilege was a debatable one. It no longer is. The historical precedent we are setting here is so great because in every future impeachment of a President, it is inconceivable that the evidence relating to that impeachment will not be in the hands of the executive branch which is under his controls. So I agree with the gentleman from Ohio, Mr. Seiberling, if we do not pass this article today, the whole impeachment power becomes meaningless.

Now, my friend from Wisconsin, Mr. Froehlich, says that we should have gone to court to enforce our subpoenas. Perhaps he is correct. Perhaps we should have. But in our system of justice, the individual who is mandated by the subpoena has the right and the opportunity and the obligation, if he challenges that subpoena, to move to quash the subpoena.

The President did not do that. He merely ignored it and having ignored it, the compulsion of our lawfully offered subpoenas still lies and he has ignored them.

I would have hoped that when the Supreme Court decision was handed down a few days ago he would have immediately delivered that material to the House Judiciary Committee. He did not. So I urge that my colleagues support this article offered by Mr. McClory because if

we do not, we will be for all time weakening the House of Representatives' power of impeachment.

I yield back the balance of my time.

The CHAIRMAN. The gentleman has consumed 3 minutes and, incidentally, the Chair would like to state that its mathematics were not quite right. The gentlemen are entitled to 3 minutes and 35 seconds.

Mr. HOGAN. Mr. Chairman, I will yield my 35 seconds to the next speaker in support of the article.

The CHAIRMAN. We will recognize them.

I recognize the gentleman from New York, Mr. Fish.

Mr. FISH. Thank you, Mr. Chairman.

I would like at the outset to say that I am one who had not made up his mind, had no option, when the question was put for speaking either in favor of it or against this article. And to help me come to a conclusion, I would like to ask a couple of questions, first of all, of counsel, and that is, if this—if there were no article III, what would be the effect in a trial in the Senate, of the Senate's ability to obtain the material that we have heretofore subpoenaed?

Mr. JENNER. Congressman—may I, Mr. Chairman?

The CHAIRMAN. Mr. Jenner.

Mr. JENNER. Congressman Fish, the subpoena facts discussed would be admissible under article I, Watergate and coverup, as part of the issue of continued coverup. However, since article I is Watergate and coverup, it does not afford an affirmative charge with respect to a—that the failure to respond to subpoenas is an impeachable offense. In my judgment, if included under article I that would have made that article duplicitous. So that if the committee is to recommend to the House an impeachment with respect to the President's refusal to respond to the subpoena, it is necessary that the committee state that in terms of a separate article.

Mr. FISH. I thank the gentleman. My next question would be directed at the author, Mr. McClory.

Mr. McClory, is it your view that if in the course of a trial in the Senate the—or before that, the President should voluntarily come forward with the material that we have heretofore subpoenaed, that it would be possible for the managers on the part of the House to drop this article?

Mr. McCLORY. If the gentleman will yield, I will respond by saying emphatically yes, that the President has been given all kinds of opportunities to come forward and even at that late stage if he came forward with the evidence there is no reason why we could not drop the article III entirely.

Mr. FISH. I thank the gentleman.

Mr. Thornton, if I could address a question to you, where in your amendment to the article offered by Mr. McClory you use the language that you discussed a few minutes ago with Mr. Butler, "demonstrated by other evidence to be substantial grounds", are you referring there to the substantiation for the subpoenaed materials that we received in each instance when a subpoena was before us prepared by counsel showing the direct need that the—the necessity for the subpoenaed material by this committee in the course of its inquiry?

Mr. THORNTON. If the gentleman will yield, I am referring to the evidentiary material which had been collected and presented to us in support of the subpoenas which were then issued.

Mr. FISH. Finally, Mr. Chairman, just an observation, and I will be glad to be challenged by anybody about this. The matter of going to the court for determination between the executive and the legislative branch, it seems to me that the decision was made by the President himself that it was equally irrelevant to him whether to go to the court or to the Congress, but rather, he made the determination himself as to what was relevant and necessary.

The CHAIRMAN. The gentleman has consumed 3½ minutes. I recognize the gentleman from New York, Mr. Smith, for 3 minutes and 35 seconds.

Mr. SMITH. Mr. Chairman, this committee subpoenaed tapes, memoranda and other records of the President. I voted to issue most of those subpoenas. The President has furnished some of the material and he has furnished transcripts of many of the tapes and he has declined to furnish the balance, asserting his constitutional right of executive privilege, and the constitutional doctrine of the separation of powers among the three coequal branches of this Government as reasons for his declination to furnish.

The committee asserts its constitutional right to reach and have this evidentiary material under the sole power of the House to impeach civil officers of the United States.

As was set forth by Mr. Froehlich, here we have a constitutional confrontation between two coequal branches of our Government.

Mr. McClory said Congress is pitted against the executive. It seems only natural and proper to me that the third coequal branch of our Government ought to be the umpire or arbiter of this confrontation of claimed constitutional rights and duties, particularly when that branch happens to be the one whose formal function it is to declare the meaning and effect of the Constitution.

And so it is that I am one of the six members of this Committee who voted to submit the enforcement of our subpoenas to the courts, a position for which there is impressive support from constitutional scholars such as Prof. Alexander Bickel of Yale. However, the majority of our committee felt otherwise. I think this was a mistake, particularly in view of the recent Supreme Court decision which upheld the subpoena of some of the same material from the President by the Special Prosecutor. Most of us on the committee feel that our case is even stronger than that of Mr. Jaworski but I think it is still a case and I am surprised at 38 lawyers who vote not to submit their case to court, even though they are Congressmen and are asserting the alleged superior and supreme power of the Congress.

I still think we should have gone to court to enforce our subpoenas. It may have, but probably would not have, taken some additional time. However, even so, in a matter as important as the impeachment of the President, we should have made this effort to obtain the tapes and the other material through the courts. If we had received them, we may have achieved some clear and convincing proof to connect the President personally and directly with the things which cannot be

condoned that went on in the Committee To Re-Elect the President and in the White House itself. In my judgment, we do not have that evidence today. Or the President may have refused to obey an order of the Supreme Court to deliver the materials sought, and clearly in my judgment, this would be impeachable conduct.

One other aspect of court enforcement of our subpoenas ought to be mentioned. We have a long tradition in this country that the accused in a criminal case shall not be compelled to be a witness against himself. In fact, this is what amendment 5 of the Constitution says as part of the Bill of Rights.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. SMITH. How much time did I have?

The CHAIRMAN. Three minutes and 35 seconds.

Mr. SMITH. I thought our side had more time than the other. I have 4 minutes, is that not so, Mr. Chairman?

Mr. RAILSBACK. Yes. He is in opposition.

The CHAIRMAN. That is correct. I am sorry, the gentleman still has 25 seconds remaining.

Mr. SMITH. Well, Mr. Chairman, I hope you did not take that out of my time. Of course, it will be said that this impeachment proceeding is not a criminal case and, of course, it is not. But we must admit it is in the nature of a supercriminal case, since it involves charges of "treason, bribery, or other high crimes and misdemeanors," and the punishment, on conviction, requires removal from office and disqualification to hold and enjoy an office of honor, trust, or profit under the United States—truly a staggering punishment for any citizen.

So, in the background of any court action to enforce our committee subpoenas and, indeed, in the background of any proposed article of impeachment based on the President's partial failure to honor our subpoenas, there are at least the implications of the fifth amendment, that the accused shall not be compelled to be a witness against himself.

The CHAIRMAN. The time has expired.

I recognize the gentleman from Wisconsin, Mr. Kastenmeier, for 3 minutes and 35 seconds.

Mr. KASTENMEIER. Thank you, Mr. Chairman.

I support this article of impeachment to preserve the power of impeachment which the Framers placed in the Constitution. Without the power to subpoena papers, materials, things necessary, the Congress cannot meet its constitutional responsibilities. I submit that for a Chief Magistrate to prevent the Congress from meeting its congressional duty, its constitutional duty, is no different than when the President himself violates the Constitution. The offense is just as grave.

It is a high crime in the classic sense which the Framers intended when they used that phrase in the Constitution.

Mr. Chairman, before it was indicated that the gentleman from Illinois, Mr. McClory, in presenting this article might have been inconsistent in the sense that whether or not he now feels or anyone feels that we need the material requested by this committee and statement would find affirmatively in fact on articles of impeachment claiming that the President had not given us material which we now would by implication say is unnecessary.



In response to that I would say that this committee made a determination at the time we voted the subpoenas and we voted the subpoenas in May, in April, by votes of 37 to 1, 29 to 9, 34 to 4.

This committee said at that time we needed this material. The President at that time said he would refuse to turn the material over to us. So we measure this particular article in the time in which it is seen, not in terms of whether subsequent to that fact we have or have not acquired sufficient evidence to make the determinations we are set upon today.

Furthermore, it has been suggested that in many areas we may not have sufficient evidence even to this date. Articles of impeachment which could lie in areas such as I.T. & T., dairy, and other areas, may not well be endorsed by this committee for the reason in fact that we do not have the materials which we found necessary to our inquiry but which the President has rejected.

This article is the only answer this committee can give.

I yield back the balance of my time, Mr. Chairman.

The CHAIRMAN. The gentleman from California, Mr. Edwards, is recognized for 3 minutes and 35 seconds.

MR. EDWARDS. Thank you, Mr. Chairman.

I suppose that many times during the past few weeks all 38 of us had looked with envy upon parliamentarians in our sister countries where, by a majority vote, members of parliament can just call a new election and indeed right now there are several of these propositions to amend the Constitution before the House Judiciary Committee but obviously will not receive attention this year.

But a new election where a President gets into trouble is not provided in the Constitution. Our Founders talked about it but they rejected it for the stability that is inherent in a 4-year term. And they rejected it for the power that a 4-year term gives to a President. This 4-year term that can only be interrupted by death or impeachment.

So, this power of impeachment that we have in article II, section 4, is all we have to protect the country from a President who gravely abuses his office. We can't have a nice, convenient election down the road by a majority vote of Congress. We can't, like our country to the north, Canada, or England or most European countries, call an election in a couple of months. We just have impeachment.

We do have, of course, the power of the purse but that is limited. We do have to enact appropriation bills and the President does have the right to spend the money.

So, I suggest that we would be irresponsible if we don't enact this title II, that if we don't, we will diminish or destroy this only safety valve in our Constitution. And for this power of impeachment to operate, if it is to have any meaning at all, any vitality at all, we simply must be able to get the evidence. That seems very clear. The inquiry must be complete if it is going to be fair and we can't be fair and complete without the facts.

Our subpoenas all were carefully drawn, narrowly drawn. We weren't seeking information about national defense or any state secrets or personal information. So, in voting for this very important article III, I suggest that we can't destroy the only safeguard that we have to protect ourselves from a President who misbehaves so badly that he

becomes a threat to the country and should be removed either now or in the future.

The CHAIRMAN. The gentleman from New Jersey, Mr. Sandman, is recognized for 4 minutes.

Mr. SANDMAN. I would like to yield 30 seconds of my time to my friend from New York, Mr Smith, to finish his statement.

Mr. SMITH. I thank the gentleman.

We were talking about whether in the background there were implications of the fifth amendment—that an accused shall not be required to be a witness against himself—and I think the question which should be asked here is whether it is fair and according to our traditions to say to the President, in effect, “We don’t yet have the clear and convincing proof we need to impeach you, so we are requiring you to hand over what we hope will be your confession, and if you don’t, in fact, hand over the materials which we hope will be a confession, we shall peremptorily impeach you for failing to turn them over on the order of the Congress, even though the Supreme Court might have found that you have good Constitutional reasons for not handing them over.”

I thank the gentleman.

Mr. SANDMAN. Thank you.

I think the outstanding point that is being raised here by my friend from Illinois, Mr. Railsback, who uses his time, and I want to yield to him in a moment, one of the things that I hear him musing about here which I think is so awfully appropriate is that this really is overkill at its worst and I know he can talk about that well. And that is about what this amounts to, a little item of overkill. There are enough votes here to pass anything and you know it and I know it. But when you reflect upon the correction that the Thornton amendment tries to make, it rapidly brings back those two Wiggins’ amendments, and then also it rapidly brings to your mind, too, a word that has been brushed under the counter here for so long, that word “direct,” “direct evidence.” It says there that these papers were needed to produce direct evidence. This is what we have been complaining about. There isn’t enough direct evidence. There isn’t any.

Then, of course, the Wiggins’ amendments corrected in there, too, because he said it will provide the necessary factual questions relating to Presidential direction. Remember that in the Wiggins’ amendments? These are the same people who voted against the Wiggins’ amendments.

The other thing in the Wiggins’ amendments, that it would provide the knowledge on the part of the President. Those words should haunt people who now have a reverse in their opinion. And, you know, I don’t think that—it seems to be the objective of some people here that unless we impeach, we are not carrying out our constitutional duty. Impeachment is that course of last resort. It is not the course of first resort. And I think we should start thinking about that once in a while.

I would like to yield to my friend from Illinois, Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I wonder if I could have my own time and use it in connection with the time yielded to me and I wonder how much time I have.

The CHAIRMAN. The gentleman has 4 minutes of his own and 1 minute if the gentleman from New Jersey yields him that minute.

Five minutes in toto. And the gentleman is recognized for 5 minutes.

Mr. RAILSBACK. Mr. Chairman and members of the committee, let me say at the outset that I don't attribute any evil motives to my friend from Illinois for offering this resolution.

Let me say, though, that I think this is a case where we, this committee, has developed a rather fragile bipartisan support of two rather substantial and serious articles of impeachment, and is now about to engage in what I call political overkill. There are many Republicans, I can tell you, on the House floor that have been impressed with the evidence that has been adduced in respect to the very serious obstruction of justice charge, and also the abuse of power charge.

Now, what is this committee about to do? We are about to be asked to impeach a President for refusing to comply with some subpoenas when he has produced substantial quantities of evidence.

What other alternatives did we have available to us? Well, we have been asked by our counsel, and they made a persuasive argument, that if the President should refuse to comply, and frankly I don't like the President stonewalling us or refusing to cooperate completely, No. 1, that we could cite him for contempt but we did not. We have also been asked to draw negative inferences by reason of his failure to produce.

Now, we are going one step further and we are saying, let us impeach him for his failure to comply. What could we have done? We could have done what has been done for years, for hundreds of years, the established procedure, which has been for the witness to be given an opportunity to appear before the full House, or the Senate as the case may be, and give reasons why he should not be held in contempt. For example, he can argue that his refusal was justified, or he can agree to turn over the materials to the full House.

The Supreme Court has held that this kind of notice and opportunity for hearings are constitutionally required under the 5th and the 14th amendments to the U.S. Constitution. We are bypassing that procedure because we did not think we had time to follow it. We refused to go to court when there were many of us that think a President has a right to exert executive privilege. We have two contesting political, separate but co-equal branches. What could be more natural but then to ask the third branch, which has been the traditional arbiter in disputes to arbitrate this dispute and determine once and for all whether the President's assertion of executive privilege would fail.

Now, let me just say I have no doubt in my mind but what in this case the court would have ruled in our favor. The court would have ruled in our favor, and I will tell you, it is probably the only way we ever would have been able to get the evidence so that we could determine the truth or the falseness of the allegations against the President.

I think, Mr. Chairman, that with this and the remaining articles, on Cambodia and taxes and emoluments, this would be a political overkill, and you watch what happens to your fragile coalition that thinks there have been two serious offenses committed under articles I and II.

Mr. McCLORY. Would the gentleman yield?

Mr. RAILSBACK. I will be glad to yield.

Mr. McCLORY. In suggesting that the courts might resolve this, the President has had the right all along to move to quash the subpoenas

if he wanted to inject the courts into this. The committee has decided that they were not subject to the court's jurisdiction, and I do not think there is any basis for saying that we are.

Mr. RAILSBACK. Let me just say to the gentleman that, in retrospect, I think that history is going to show that Alexander Bickel, one of the top constitutional experts in the country, was correct when he came out about a week and a half after we decided in this committee against going to Court and said that this is exactly what we should have done. We made a mistake, but we certainly should not impeach the President because we made a mistake.

Mr. SEIBERLING. Would the gentleman yield?

Mr. RAILSBACK. Yes, I would be glad to.

Mr. SEIBERLING. Well, I believe the gentleman sat over there in the hearing before the Supreme Court when Mr. St. Clair and Mr. Jaworski were arguing the case of *United States v. Nixon*. I was there, and I heard Mr. St. Clair make a very strong argument that the Court should not rule on behalf of the special prosecutor because to do so would inject the courts into the impeachment process, which is a constitutional process, and the sole power of impeachment rests in the House, not in the courts.

Mr. RAILSBACK. That does not have anything whatsoever to do with us. We are in a separate status. We are the Congress. We are not the special prosecutor. We have even greater rights to the materials.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

I recognize Mr. Conyers.

Mr. CONYERS. Well, I thank the Chair.

The CHAIRMAN. Has 3 minutes and 35 seconds.

Mr. CONYERS. Mr. Chairman, I would first like to indicate that the reason that I supported the McClory article in its full and undiluted form was simply because there was no reason in the face of this first historic instance of willful noncompliance on the part of a President to refuse to comply that we should have to modify in any respect the enormity of the challenge that he himself has put before us.

Now, I think it is more important than to begin worrying about whether we are going to have articles that do not meet with the approval of everyone on this committee, that we continue this process as thoughtfully as we are able. To not include this article—one that is of enormous importance to the Constitution itself—would speak very poorly of the recommendations coming from the Judiciary Committee, and certainly, ultimately, the decision that must yet be made on the floor.

Now, too many members here are beginning to think that we are casting the final decision on impeachment in the Judiciary Committee. Well, let me remind you that there are 400 other members that are going to decide this, and I resent any implications of people on the committee suggesting what ought and what ought not to be introduced now that we have two articles of impeachment, because anyone that does not like whatever other articles—including this one that is presented to them—has their obligation to vote against them. But I do not think that they intimidate or curtail the views of any member on this committee as to what they are supposed to do.

Now, I introduced the first motion that would have accelerated the impeachment procedure by taking to the floor immediately an article for the refusal of the President to comply, because if there is anything we must pull out of this impeachment process, it is the impeachment process itself, which the President himself now challenges by raising the spurious concept that he has raised here. Executive privilege has no basis in an impeachment proceeding, and most scholars have said so repeatedly.

And so with those words, Mr. Chairman, I fully and strongly support this article and hope that it will be reported by the largest number possible on this committee, and that it will be sustained by the majority of our colleagues on the floor.

Mr. SEIBERLING. Would the gentleman yield?

Mr. CONYERS. Yes, I will.

Mr. SEIBERLING. What this really comes down to is, does this committee mean what it says about conducting an impeachment inquiry, and mean it about the powers of Congress, or when we are really faced by a stonewall in the White House, do we just say "poof" and collapse?

The CHAIRMAN. The gentleman from Indiana, Mr. Dennis, is recognized for 4 minutes.

Mr. DENNIS. Thank you, Mr. Chairman.

Mr. Chairman, articles I and II can be debated on the law and on the facts as, indeed, they have been and will be.

But this proposed article we have before us now is utterly without merit. The President, in this instance, asserted what he claimed to be a constitutional right based on executive privilege and the separation of powers, and it is a right, incidentally, which under certain circumstances has now been recognized by the Court in the course of its recent opinion. We took a different position, and now we are going to say, without any resolution of that question, that because you, Mr. President, invoked a constitutional position, we are going to impeach you.

Now, that argument ought to carry its own answer. We elected never to test the question. We never went to the floor of the House and asked the House to vote a contempt as we might have done, and should have done if we thought he was in contempt. We elected by vote of this committee not to test the matter in the Court, as we might have done, and even though as the Court reiterated the other day, the courts are emphatically the province to determine what the law is. We could have been parties to the recent suit or a similar suit, and we would probably have prevailed, and we know that the President would have complied, and we would have this evidence if we just had gone and asked for it in the proper forum. But, we refused to do that.

Now, the full right to impeach does not carry with it the sole right to determine what the Constitution means. It does not make us the sole arbitrator of the Constitution. There is a bootstrap operation here, ladies and gentlemen, and we are in effect trying to say to the President that if you do not agree with our view of the Constitution we are going to impeach you. Now, that is not a reasonable position to take.

The Court, in *Nixon against Sirica* the other day said this: "If a President concludes that compliance with a subpoena would be injuri-

ous to the public interest he may properly invoke a claim of privilege." That is exactly what the President did.

And it will reflect no credit on this committee if we try to impeach him for doing that.

Mr. SEIBERLING. Would the gentleman yield?

Mr. DENNIS. I reserve my time.

The CHAIRMAN. The gentleman cannot reserve his time.

Mr. DENNIS. I do not yield.

The CHAIRMAN. The gentleman refuses to yield.

The Chair notes that there is a rollcall vote in process on the floor, and the Chair will recess the committee and continue the debate on this question and the recognition of members at 2 o'clock.

[Whereupon, at 12:40 p.m., the committee was recessed, to reconvene at 2 p.m. this same day.]

#### AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

At the time the committee recessed we were still considering the McClory article III, as amended, and at the time there were eight members to speak in opposition of the article with 3½ minutes for each member, and six members to speak in support. So, I will recognize now Mr. Eilberg for 3½ minutes.

Mr. EILBERG. Mr. Chairman, I think there is no justifiable defense for the President's refusal to comply with subpoenas. I respectfully submit that if members now considering voting against approving this article of impeachment did not think the President should be disciplined or punished for refusing to comply with the subpoenas, why did they vote for them in the first place? Is it not true that subpoenas are demands backed up by the threat of punishment for noncompliance?

If not by impeachment, how can the President, as a practical matter, and I emphasize practical matter, be disciplined or punished for noncompliance? At no time has any reasonable argument been advanced for the President's refusal.

His lawyer argued that the President has executive privilege in this matter. He said disclosure of these conversations could endanger the principle of confidentiality and threaten the ability of the President to conduct his business of his office. But, during the impeachment of Andrew Johnson there was a far-reaching inquiry into the conversations between that President and his aides. No information was withheld from the committee making that investigation, and it could not be argued that this resulted in any way in limiting any subsequent President's ability to communicate with his aides.

No argument has been made which justifies any right of executive privilege in an impeachment inquiry. No legal scholar of which I am aware, past or present, has argued that the President has the right to limit an impeachment inquiry into his conduct in any way except possibly by pleading the fifth amendment.

However, the President's lawyer, James St. Clair, said at his press conference last week that the President would not claim the fifth amendment.

By failure to adopt article III, we shall be unleashing a Presidency which has no limitations. The Framers of the Constitution put the

power of impeachment into the Constitution to provide a check on the President. They knew that a President who could not be called to account for his actions might become a dictator, and if we do not impeach Richard Nixon for not cooperating with this investigation, we shall be giving up at least some of Congress' right to question the President's actions.

Thank you, Mr. Chairman.

The CHAIRMAN. I recognize the gentleman from Virginia, Mr. Butler, for 4 minutes.

Mr. BUTLER. Thank you, Mr. Chairman.

Whether the House of Representatives shall impeach or not is in many ways a matter of discretion. We have a great deal of discretion as to whether or not we will impeach, and within the framework of our decision as to whether an impeachable offense exists or not, there is still the judgment which is reposed in us to determine whether it is in the best interests of the country to impeach or not to impeach under those circumstances.

In my judgment we will have placed after adoption of articles I and II by the House of Representatives, we will have placed the issue of Presidential conduct sufficiently before the Senate of the United States for a determination of whether the President should be continued in office or not. And any additional articles would extend the proceeding unnecessarily. We do not need this article, and it serves no useful purpose to pursue it, and I would recommend against it.

The principal problem for me with reference to this article is whether the conduct standing alone is an impeachable offense under the Constitution. I think not. I am concerned, however, that what we do in substance by article III is to impeach a President for a failure to cooperate in his own impeachment, and to me that is basically unfair. In my judgment the House of Representatives has a responsibility to go further down the road than we have at this moment before we impeach the President for his noncompliance with our subpoenas.

I would prefer that our determination be affirmed by the courts in an appropriate proceeding, or at least by a preliminary determination of a contempt in an appropriate proceeding before the House.

The issue is also one of legislative responsibility. We are saying today, if we pass article III, that 20 members, a bare majority of the 38-member committee, can, for reasons deemed as sufficient unto themselves, issue a subpoena to the President and recommend his impeachment for their judgment as to the sufficiency of his partial compliance with the subpoena. This article offends my sense of fairplay, and I intend to vote against it.

Mr. Chairman, I yield the balance of my time to the gentleman from Maine, if I may.

The CHAIRMAN. The gentleman has no time remaining. The gentleman's time has expired.

I recognize the gentleman from California, Mr. Danielson, for 3½ minutes.

Mr. DANIELSON. Mr. Chairman, I support this article of impeachment and I would like to point out that the power of Congress to subpoena any and every document from the President in the case of impeachment has been established as far back as 1792 by President

George Washington, and was restated in 1796, by President Tyler in 1843, President Polk in 1846, President Grant in 1876, President Cleveland in 1886, Theodore Roosevelt in 1909, and Franklin D. Roosevelt in an opinion by his Attorney General in 1941.

I submit that we should continue to assert this very important right and responsibility of the House.

Counsel, Mr. Jenner, has provided for me an excerpt from the recent decision in *United States v. Nixon*. By simply substituting the word or the equivalent of "House of Representatives" for "courts" and impeachment as a function, here is what you would find on pages 24 and 27 of the Supreme Court decision.

"The ends of justice respecting exercise by the House of Representatives of its sole power of impeachment would be defeated if its judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the impeachment system provided in the Constitution and public confidence in that system depend on full disclosure of all facts. To insure that justice is done, it is imperative to this constitutional function of the House of Representatives that compulsory process be available for production of evidence needed by the House of Representatives."

And on page 27: "On the other hand, the allowance of the privilege to withhold evidence that is demonstrably relevant in an impeachment inquiry would cut deeply into the guarantee of due processes of law and gravely impair the basic constitutional function conferred solely on the House of Representatives."

That, ladies and gentlemen of the committee and Mr. Chairman, that is what the Supreme Court would probably state if this issue were before it. And I yield the balance of my time to the gentleman from Illinois, Mr. McClory.

The CHAIRMAN. The gentleman has consumed 3 minutes and 10 seconds; 2 minutes and 40 seconds. The gentleman from Maine, Mr. Cohen, is recognized for 4 minutes.

Mr. COHEN. Thank you, Mr. Chairman.

I would like to point out initially that whether this article passes or fails, I want to make it clear that this member of that fragile coalition intends to remain firm in his adherence to articles I and II.

The able gentleman from California, Mr. Wiggins, suggested that this article is logically inconsistent with a vote for articles I and II and I simply cannot agree with that statement. The fact that one can arrive at a conclusion based upon clear and convincing evidence in no way diminishes the need to review all of the relevant evidence and I would point out that it was not decided until just recently, the final days of our proceedings, whether the test that we would apply would be that of probable cause, clear and convincing evidence or beyond a reasonable doubt. But to conclude that the evidence was sufficient for the committee to reach a decision does not mean that we were not entitled to all of the information that was relevant and that the President was not obligated to furnish it to us or that the Senate is not entitled to the evidence if they insist upon a standard of beyond a reasonable doubt.

The reference to logic prompted me to think of Justice Holmes' statement that a page of history is worth a volume of logic. And I think it is



clear that the information that was relevant to our inquiry and necessary was withheld. Some of it had to come through the Special Prosecutor or through the grand jury. And I suppose that had the committee been unable to reach a decision to its satisfaction on the issues, it would have been argued, logically, that you cannot impeach a President for invoking executive privilege when the issue had not been resolved by the final arbiter, the Supreme Court.

I stated the other day that one of the most unfortunate aspects of this case whereby the saddest and most melancholy wounds were those that were self-inflicted has been the degradation of valuable doctrines such as executive privilege and national security because they in my belief, have been invoked for illegitimate purposes and I only hope the wounds are not fatal.

I believe that the withholding of the evidence was just one other example of Presidential action that was calculated to impede rather than expedite the administration of justice and that to the extent that it is not covered by article I or by article II, I would like to put my colleagues on notice that I would propose to introduce an amendment to include such a provision on the House floor.

We are concerned about setting precedents and I would note parenthetically, that neither the procedure nor the spirit that permeated the Johnson impeachment trial was binding or influential upon this body. I do not think we should set in concrete as a matter of law that no future President should ever be able to invoke the doctrines of executive privilege or national security as restraints upon our power. I believe that the facts are clear and that we can decide this case as a matter of fact rather than as a matter of law.

Thank you. That means I am not going to support the amendment.

The CHAIRMAN. I recognize the gentleman from Massachusetts, Father Drinan, for 31½ minutes.

Mr. DRINAN. Thank you very much, Mr. Chairman.

Since I have been in Congress I have voted on two contempt citations. On the first, Dr. Frank Stanton on July 13, 1971, I found myself with a vast majority voting to re-committee that particular citation of contempt. It turned out that the subcommittee in question already had the full text of the material deleted by CBS and as a result, I voted to re-commit it and I was happy to see that Mr. Dennis and Mr. Wiggins and many others in this committee joined me.

The question of Gordon Liddy was different. On September 10, 1973, I voted for contempt with the overwhelming majority of the House of Representatives. Mr. Liddy refused even to give his name and he did not even get to the question of invoking the fifth amendment. So I find the question of the President really in the same category as these two individuals and any other person whose documents this Congress does in fact seek to subpoena. And in Professor Ralph Burger's book that I looked at just now, I find nothing that would justify defiance of our subpoena and in the Supreme Court decision last week the Court went out of its way to say that the President had not actually invoked any military or diplomatic justification for his refusal for the subpoenas.

Similarly, in this case, we have not even approached any justification by the President in the area of military or diplomatic justification.

I wish I could understand some of my colleagues who are saying that

we should have gone to court and unless, since we did not do that, we are not able to cite the President for contempt and in case—in the case of the President, contempt turns out to be impeachment, since he cannot as a sitting President be indicted in a court and I, therefore, Mr. Chairman, say reluctantly that I must disagree with those who will vote against this article and I think that this article strengthens the other two. I wish that it did not have to be done but I hope that we have a strong affirmative vote in favor of article III.

The CHAIRMAN. I recognize the gentleman from California, Mr. Moorhead, for 4 minutes.

MR. MOORHEAD. Mr. Chairman, this particular article concerns me more than any of the others that have been filed against the President because I believe that a very important constitutional privilege—constitutional question is involved.

The assertion by the Congress that under the impeachment power it can exercise absolute power of impeachment or any ancillary matter in connection with impeachment without court review certainly would lay the groundwork for legislative abuse of power. I think that it is important that we do have a check and balance. Under our system, the courts are the final determiner of what the law is.

There are many things about the power that was given to Congress that might well have to be interpreted by the court. There are other constitutional rights that have been set down under our U.S. Constitution. Those rights on occasion come into conflict with the power that was given to the House of Representatives to bring impeachment proceedings. Those powers have to be weighed and balanced and it is the courts that have been given that authority under our Constitution.

I think that it is vitally important that this committee, before it considers impeaching a President for failure to follow their demands in a subpoena, to take the matter to court as I and some of the other members on this committee voted to do. Some have said there no longer is a privilege of confidentiality in the President. But in the *United States vs. Nixon* the court said specifically as to the case they were deciding:

In this case we must weigh the importance of the general privilege of confidentiality of Presidential communications in performance of his responsibilities against the inroads of such a privilege on the fair administration of the criminal justice.

But they did not rule out the claim in all cases to the privilege. Later on they said:

Moreover a President's communications and activities encompass a vastly wider range of sensitive material than would be true of any ordinary individual. It is therefore necessary in the public interests to accord Presidential confidentiality the greatest protection consistent with fair administration of justice. The need for confidentiality even as to idle conversations with associates in which casual references might be made concerning political leaders within the country or foreign statesmen is too obvious to call for further treatment.

It is important that the President or any other citizen of the United States have a right to have a judicial determination of the validity of any section of the Constitution or any law before he places himself in jeopardy of being impeached.

I ask for a no vote.

The CHAIRMAN. The gentlelady from Texas is recognized for 3½ minutes.

Ms. JORDAN. Thank you, Mr. Chairman.

Mr. Chairman, when Mr. St. Clair, the President's attorney, started to present to us his closing summation of the case before this committee, he said as a matter of first instance that a President cannot be impeached by piling inference upon inference.

Now, I agree with that, but if the President had complied with the subpoenas for information issued by this committee, there would be no necessity for an inference to be drawn in the first instance. If the President had provided the best evidence which this committee sought, there would be no necessity for us to infer anything.

Example: The June 20 conversation is important. The 18½-minute gap is on the conversation that the President has with Mr. Haldeman. We subpoenaed—this committee subpoenaed conversations which the President had on the 20th of June with Mr. Charles Colson. He talked to Mr. Colson four times that day. Mr. Colson knew about the Liddy plan for intelligence gathering. If we had had compliance with the subpoena of this committee and had secured those four conversations, we may not have to infer what the President knew on the June 20 tape which was manually erased.

The argument that this subpoena power of this committee violates separation of powers doctrine has no validity in my judgment in that the fact that we have three separate branches of Government does not mean that we have three Governments. They are independent but relatively dependent. Consequently, this partial intermixture of powers gives rise to the whole workings and the whole functioning of the Government.

If the President had cooperated with this committee, it would have been a part of the whole working of the matter of the impeachment process as we have tried to go forward with it.

The CHAIRMAN. The gentleman from New Jersey, Mr. Maraziti, is recognized for 4 minutes.

Mr. MARAZITI. Thank you, Mr. Chairman.

In a recent case, the recent case last week, the court decided that if the President felt that he must exercise a right or a privilege for the welfare of the people of this nation he should do so. And the President did exactly that in the *Jaworski* case, and the court decided.

Now, contrary to what has been said here today, the doctrine of executive privilege is still alive. It is still a valid doctrine, and the court stated that the bare exercise, the vacant exercise of the privilege is not sufficient. There must be a showing of national security interests or diplomatic considerations and so on. So, the doctrine is still valid.

Now, this committee certainly has the right to recommend and to decide to recommend any number of articles of impeachment to the House. But as Mr. Dennis has stated, this committee does not have the right, and thank God it does not, to decide all constitutional questions and just what the Constitution means in every particular instance.

Now, here we have a dispute between the executive branch and the legislative branch, and in cases of disputes between departments, the Supreme Court must decide and does decide. And I submit, Mr. Chair-

man, that this committee had a very, very simple solution to this dilemma. It was proposed in the Dennis motion several months ago, supported by some of us, to join the Jaworski application and make our application, get a decision. And let me say here and now that if the court had decided that the President should exhibit those tapes and deliver those tapes to this committee, and if he refused, I would have voted impeachment on that ground. But failing in that, this committee failing to take the action to support the Dennis motion and get a definitive decision, I cannot support this article of impeachment.

The CHAIRMAN. The gentleman from Arkansas, Mr. Thornton, is recognized for 3 minutes and 30 seconds.

Mr. THORNTON. Thank you, Mr. Chairman.

Mr. Chairman, I would like to say that many of the views which have been expressed in opposition to the adoption of this article are similar to views which I have expressed in urging that it should more properly be considered for inclusion in one of the general articles previously adopted. I would like in the short time that I have to refer specifically to some questions that have been asked during the debate.

The gentleman from New Jersey referred to the words "direct evidence" used in my perfecting amendment. For the purpose of the record, by those words I intended to refer to that evidence within the President's custody and control which is most direct—the original documents and tapes to which our subpoenas were addressed.

Next, when I use the phrase that these papers and things were deemed necessary to resolve questions, I certainly did not intend to suggest that the committee lacked clear and convincing evidence upon which to base its decision, but rather that in resolving the question before us, our committee was seeking to obtain all of the evidence relating to the Presidential direction, knowledge, or approval of actions demonstrated by other evidence to be substantial grounds for impeachment of the President.

By its votes, this committee has already determined that there is clear and convincing evidence which has compelled a large majority of our committee to reach its conclusion with respect to articles I and II. But we are not charged with the simple duty of proceeding until we find sufficient evidence upon which to base our conclusions. We were charged with the duty of investigating fully and completely all necessary evidence and drawing our conclusions from that evidence, and our committee was impeded in its inquiry by the refusal to comply with our subpoenas.

Now, we have already dealt with the question as to whether the courts should be called upon to determine the extent of our subpoena authority in an impeachment proceeding, and I think we correctly determined that the duty to enforce our subpoenas rested upon the Congress and not upon the courts.

Mr. Chairman, there must be a sufficient nexus between the evidence subpoenaed and the independently impeachable offense for a refusal to comply with the subpoena to be an impeachable offense. I believe that the evidence gathered by the committee establishes that nexus between the obstruction of justice and the refusal to comply with our lawful subpoenas.

For the reasons I have outlined, I am prepared to vote for the article offered by the gentleman from Illinois, as it is now connected by an

amendment to substantive offenses charged in articles I and II. However, I would like to state that I consider the matter to be more appropriately included in the body of a substantive article, and that I will, therefore, support the efforts of the gentleman from Maine to include it there on the House floor.

The CHAIRMAN. The gentleman from Alabama, Mr. Flowers, is recognized for 4 minutes.

Mr. FLOWERS. Thank you, Mr. Chairman.

Mr. Chairman and colleagues, I have voted for two articles of impeachment here because I was clearly convinced that they should have been supported, and that the evidence and the facts justified each, although I had a great deal of reluctance. Now, here in this instance I am just as clearly convinced, and I do not have any reluctance whatsoever in voting against article III. And I seriously, seriously ask that my friends on this side and the two lonesome ones on the other side that appear to be voting for it, and it is kind of lonesome over here on this side, opposing it, I ask that you consider what we are doing here.

And let us not kid ourselves. If this article were standing alone, and I think that is the way we must look at it, but if it were standing alone, would we be seriously thinking about impeaching the President of the United States for this charge?

Now, there may be some that disagree with me, but I honestly think not for the majority of this committee, and I do not see how we can possibly approach it in any other way. Perhaps we are too imbued with our new found power. We have been thinking too much about the House having the sole power of impeachment. I do not know what it is that brings us to this point. But this is going too far for me, and I cannot consider impeaching the President of the United States for this charge. It is just not sufficient.

Now, here are the kind of things that run through my mind, and again this is me. At some point, at least to me, there is a question of whether the President must comply with a subpoena issued by this committee. I think that at some point that the President, the Chief Executive has an opportunity to raise the issue of whether or not he has already given enough evidence. I certainly do not think we are anywhere near approaching it in this instance, but we did not take the necessary steps to elevate this to the status of an impeachable offense.

Second then, we could have elevated this to the level of an impeachable offense by either going to the House floor or going to the courts, as my colleague from Illinois, Mr. Railsback, suggested. In this particular, you might argue that we are putting the cart before the horse.

I think as my colleague from Arkansas has suggested, it would be better placed in either article I or article II that we have already voted on. I probably would oppose it as an inclusion, but it would certainly more than likely be acceptable to most in one of those articles.

Now, one of our colleagues has quoted President Polk in 1846 this morning, and I think that is carrying it a little bit too far. President Polk was talking in the abstract about a matter, and it seems to me like he was trying to avoid the issue. You could not seriously argue that if President Polk were about to be impeached that this language would mean that he was going to go ahead and comply with the sub-

pena. That was not the case that was put to him, and I just do not think we can carry it that far.

This situation may be what I was talking about the other night when I said that some people think there are too many lawyers on this committee, and I appointed myself without objection as the representative of the nonlawyers and the public. I have heard somebody say since then that I was best qualified to do that.

In any event, my friends, please reconsider what you are doing here. Does it stand on its own as an impeachable offense? I think not. And I firmly oppose this article of impeachment offered by my friend from Illinois.

Mr. McCLORY. Would the gentleman yield?

The CHAIRMAN. The time of the gentleman has expired.

The gentleman from Missouri, Mr. Hungate, is recognized for 3 minutes and 30 seconds.

Mr. HUNGATE. Thank you, Mr. Chairman.

I support this article and feel more strongly about it than any other. I respect those who disagree, and as I hear the arguments I think I know why there are no lawsuits in Heaven. The other side has all of the good lawyers.

I am sorry to disagree with my colleagues, but I do, and I disagree with Professor Bickel too. It strikes me that in *United States v. Nixon* Mr. St. Clair's argument was based on the fact that this was an intra-executive branch squabble to which they should not enter. He based his argument on Professor Bickel's writing. As I recall, Professor Bickel did not approve of the one man, one vote decision. He was wiser then perhaps. I do not always agree with him, for Professor Bickel is not always right.

In democracies and republics we face different problems than do totalitarian countries where rulers can dismiss the legislatures. In republics rulers ignore the people's representatives at their peril.

Anyone can claim the fifth amendment and get it, and that includes the President. I think we would not have any argument about that.

But, how are we to obtain evidence? We got it in this case by accident.

When you talk of the separation of powers and the confrontation we face here, I am indebted to another fine Congressman, the late George Andrews from Alabama for my education on this subject that deeply impressed me, that we do have three co-equal branches. But as Speaker McCormick used to say, "all Members of the Congress are equal, but some are more equal than others." I think all branches of government are equal, but some are more equal. You can become President without being elected. We have had some tragic assassinations. Lyndon B. Johnson and Andrew Johnson both became President without being elected. In fact, Andrew was never elected. You can go to the Senate without being elected. Members serve there and they are never elected, they go back and they are simply appointed.

But, you cannot come in the House of Representatives without passing before the people and being elected. And you only serve for 2 years. You had better be close to the people, you had better refresh your "mandate." This is the reason why I think the Founding Fathers put the sole power of impeachment in the Congress, the power to impeach the President in the Congress, the power to impeach the Su-

preme Court Justices in the Congress, and the ultimate power in the case of confrontation in the body nearest to the people, closest to the people's control. I submit the House of Representatives is that body, and I cannot acquiesce in agreeing that it is an inferior body, or in making it one now. If we are to simply push papers, there are many paper pushers of independence who will choose to do that elsewhere.

I urge approval of article III.

The CHAIRMAN. I recognize the gentleman from Michigan, Mr. Hutchinson, for 4 minutes.

Mr. HUTCHINSON. Thank you, Mr. Chairman.

I suppose it will come as no surprise to anyone that I would oppose the inclusion of this article of impeachment because I voted against subpoenaing the President of the United States on every occasion. I voted against those subpoenas because first I did not think there was any practical way to enforce them. But, equally and perhaps even more importantly, I voted against subpoenaing the President of the United States because we have a government of three co-equal branches, and that means to me that while the President is not above the House of Representatives and the Senate, neither is he below the Congress. He is equal with the Court and the Court is not above him, nor is he above the Court. These are three coordinate branches.

It seems to me to make that system work there has to be an accommodation between those branches, but confrontation never, never settles anything.

It was my expectation, my hope, I would say even expectation in the beginning, that the President and the committee could, through negotiation and discussion on the part of counsel, work out a way in which the President could voluntarily—would voluntarily make available necessary material and I joined with the chairman of the committee in letters to the President making such requests.

I think that the President has actually turned over a lot of material to this committee. I am not going to enumerate it all because members of the committee are all extensively aware of the vast amount of material that has been turned over to the committee that has come from the White House.

But in any event, when it came to subpoenaing the President, I did not think that even the power of impeachment should break down the doctrine of coordinate branches.

I think that just as the President cannot order the House of Representatives to do anything, neither do I think that the House of Representatives can order the President to do anything. I happen to feel the same way about the Court, I do not—I cannot imagine that the Court—that the President could order the Court to do something, so it is hard for me to accept the proposition that the Court can order the President to do anything.

At that level, at the very top of our structure of three coordinate branches, where the President is equal in all respects to the other two branches, I think the only way to get along is through cooperation and working things out in a satisfactory way in order to preserve the prerogatives of all three branches.

Now, earlier, early on in this inquiry, I made a statement that I thought that in the face of an impeachment inquiry that the Executive—the doctrine of executive privilege must fall. I have changed

my opinion on that because the Supreme Court the other day recognized that the doctrine of executive privilege exists and has applied.

We in the House, we have our privileges. I wonder if the people generally realize that any time that a Member of this House of Representatives is summoned into a court, that summons cannot be answered without the Member going to the House and getting permission of the House to comply with the subpoena.

The CHAIRMAN. The time——

Mr. HUTCHINSON. My time has expired? I am sorry. I would like to have had more time.

The CHAIRMAN. The time of the gentleman has expired.

The gentleman from Illinois is recognized for 4 minutes and 20 seconds. And after the gentleman from Illinois has consumed his time, there is no further time.

The gentleman from Ohio, was he seeking recognition for some purpose other than——

Mr. LATTI. Apparently the Chairman did not put my name down earlier in the day but I will not raise an objection.

The CHAIRMAN. I regret, but the list that was given to me did not include the gentleman's name.

Mr. LATTI. May I respectfully suggest to the Chair that I could poll members around here that could say that I raised my hand but I will not do so.

The CHAIRMAN. The gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, this committee has urged the President to provide us with the necessary and relevant information to conclude and do a thorough and complete inquiry. We have issued the subpoenas. He has rejected those. Following the rejection of our subpoenas we warned the President in a letter of May 30 that if he did not respond, we would consider this as a ground of impeachment.

The President's counsel has urged and I think that he has urged appropriately, that charges against the President should be in separate and specific articles. This is a separate and specific article and it is a separate type of charge, it seems to me.

I hope myself that the additional evidence which will be presented, if it is presented, in the Senate or at any other time would exculpate and exonerate the President and during these weeks I have been urging the President to respond favorably to our subpoenas.

That same urging of the President has been directed by the Vice President, and by the Republican leader of the House.

Now, what did the President turn over in response to our request? He turned over nothing. If it were not for the fact that we got materials from the Special Prosecutor we would not have evidence upon which to conduct our inquiry. As a matter of fact, it would be entirely appropriate in response to the gentleman from Alabama to vote this as a sole and separate and distinct article of impeachment if we had received all that we had received from the President and through the President, which is virtually nothing.

So what we are considering here, the evidence that we have, we did not get from the President. We got it elsewhere.

Now, it is pure speculation that by going to the Court that we would be able to get some kind of remedy. As a matter of fact, this



committee has taken the position definitely and over and over again that we did not want to subject ourselves to the jurisdiction of the Court. In the arguments which just took place in the case of *United States* against *Nixon*, the question was asked of Mr. St. Clair and he responded quite correctly that the Congress had the sole jurisdiction of the subject of impeachment and this was not a justifiable subject before the Supreme Court. The Courts are excluded from our consideration of this. The House has the sole power of impeachment and we have expressed that.

Now, it seems to me that the other process that we could have gone through of contempt would be quite unacceptable and we did not want to go through that. I suggested that some months ago but I was deterred in that by leaders from both sides of the aisle and with the prospect that we would take this up when it came to the consideration of an article of impeachment. And that is what we are doing at this time.

It seems to me that it is entirely appropriate that we should tell the President, and this will be a guide for future Presidents or future impeachments, that if there is no response, or if the response is inadequate to the requests that we make, if our subpoenas are defied, why, then, the Congress is going to take this kind of decisive action. Contempt, of course, is a strong action. You can have summary contempt in a court and imprisonment and all kinds of strong penalties, so this is decisive action. This is firm action. But it seems to me that it is the only kind of action we can take under the circumstances and I urge a favorable vote on this article III.

I yield to the gentleman from Ohio.

The CHAIRMAN. The gentleman has 1 minute remaining.

Mr. LATTA. Thank you very much for yielding.

Mr. McCLORY. I would like to yield about 45 seconds so I have 15 seconds.

Mr. LATTA. I might say to my friend from Illinois that he is using my 4 minutes. He already spoke 10 minutes on this. So I am very generous. So he ought to let me at least have 60 seconds.

I just want to point out one thing before we vote on this very important article and it is a very important article, that history will record this as a precedent, a precedent, and in the future whenever any Congress wants to impeach a President of the United States, it can cite this article as a precedent.

Now, whenever you have, as the gentleman from Virginia has pointed out, a majority of any committee that has subpoena powers decide to send down to the White House a subpoena that the Executive Chief does not choose to honor, he is subject to impeachment.

Now, this is a dangerous precedent and I think when we are talking about diminishing the powers of the Presidency, here is another example of that and I don't think we should take this long step toward further diminishing the powers of the Presidency.

Mr. McCLORY. Mr. Chairman, I would just say in conclusion that if what my colleague from Michigan says is true, that if we are powerless when it comes to expressing our authority with regard to impeachment where another branch of government is concerned, that we have to take whatever they give and that is all, why, then, of course, the

power of impeachment would be sterile indeed and I urge a favorable vote on this article.

The CHAIRMAN. All time has expired. The question now occurs on article III as amended. All those in favor please signify by saying aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

Mr. HUTCHINSON. Mr. Chairman, I demand the ayes and nays.

The CHAIRMAN. The call of the roll is demanded and the rollcall is ordered and all those in favor of article III as amended please signify by saying aye when their name is called.

Those opposed, no and the clerk will call the roll.

The CLERK. Mr. Donohue

Mr. DONOHUE. Aye.

The CLERK. Mr. Brooks

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier

Mr. KASTENMEIER. Aye.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers

Mr. CONYERS. Aye.

The CLERK. Mr. Eilberg.

Mr. EILBERG. Aye.

The CLERK. Mr. Waldie.

Mr. WALDIE. Aye.

The CLERK. Mr. Flowers.

Mr. FLOWERS. No.

The CLERK. Mr. Mann.

Mr. MANN. No.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. Aye.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. Aye.

The CLERK. Mr. Danielson.

Mr. DANIELSON. Aye.

The CLERK. Mr. Drinan.

Mr. DRINAN. Aye.

The CLERK. Mr. Rangel.

Mr. RANGEL. Aye.

The CLERK. Ms. Jordan.

Ms. JORDAN. Aye.

The CLERK. Mr. Thornton.

Mr. THORNTON. Aye.

The CLERK. Ms. Holtzman.

Ms. HOLTZMAN. Aye.

The CLERK. Mr. Owens.

Mr. OWENS. Aye.

The CLERK. Mr. Mezvinsky.

Mr. MEZVINSKY. Aye.

The CLERK. Mr. Hutchinson.

Mr. HUTCHINSON. No.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Smith.

Mr. SMITH. No.

The CLERK. Mr. Sandman.

Mr. SANDMAN. No.

The CLERK. Mr. Railsback.

Mr. RAILSBACK. No.

The CLERK. Mr. Wiggins.

Mr. WIGGINS. No.

The CLERK. Mr. Dennis.

Mr. DENNIS. No.

The CLERK. Mr. Fish.

Mr. FISH. No.

The CLERK. Mr. Mayne.

Mr. MAYNE. No.

The CLERK. Mr. Hogan.

Mr. HOGAN. Aye.

The CLERK. Mr. Butler.

Mr. BUTLER. No.

The CLERK. Mr. Cohen.

Mr. COHEN. No.

The CLERK. Mr. Lott.

Mr. LOTT. No.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. No.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. No.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. No.

The CLERK. Mr. Latta.

Mr. LATTI. No.

The CLERK. Mr. Rodino.

The CHAIRMAN. Aye.

The CLERK. Mr. Chairman?

The CHAIRMAN. The clerk will report.

The CLERK. Twenty-one members have voted aye, 17 members have voted no.

The CHAIRMAN: And the amendment is agreed to and on the resolution article III is adopted and will be reported to the House together with the Donohue resolution embodying articles I and II.

And the Chair will recess until 4:15.

[Recess.]

The CHAIRMAN. The committee will be in order.

Mr. CONYERS. Mr. Chairman?

The CHAIRMAN. I recognize the gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. I have an article at the desk that has also been distributed to the members, and I move it and ask that it be read at this point.

The CHAIRMAN. The clerk will please read the article.

The CLERK [reading]:

In his conduct of the office of President of the United States, Richard M. Nixon in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in disregard of his constitutional duty to take care that the laws be faithfully executed, on and subsequent to March 17, 1969, authorized, ordered, and ratified the concealment from the Congress of the facts and the submission to the Congress of false and misleading statements concerning the existence, scope, and nature of American bombing operations in Cambodia in derogation of the power of the Congress to declare war, to make appropriations, and to raise and support armies, and by such conduct warrants impeachment and trial and removal from office.

The CHAIRMAN. The gentleman is recognized.

Mr. CONYERS. Mr. Chairman, I ask unanimous consent that all debate on this article numbered IV, including consideration of any amendments thereto, be limited to a period not to exceed 2 hours to be divided equally between opponents and proponents of the article. This would include, of course, the debate on any amendment which shall be limited to a period not to exceed 20 minutes divided equally also between opponents and proponents of the amendment.

Mr. RAILSBACK. Mr. Chairman, I wonder if the gentleman would consider making it 1 hour?

The CHAIRMAN. Is the gentleman objecting to the unanimous consent, or reserving his right to object?

Mr. RAILSBACK. I would object. I wonder, to get all of this out of the way, I wonder if we could not make it 1 hour?

Mr. CONYERS. If the gentleman from Illinois would agree to this, because I think it is on the right track, how about an hour and one-half?

Mr. RAILSBACK. OK.

The CHAIRMAN. Without objection then, the article will be debated for 1 hour and 30 minutes—90 minutes to be divided equally between opponents and proponents of the article.

This, of course, as the gentleman has already expressed in his unanimous consent request, would also include the limitation on the time for debate on any amendment hereto, which would not exceed 20 minutes, and which would be divided equally for opponents and proponents, all such time coming out of the one hour and one-half.

Without objection, it is so ordered, and the Members who seek recognition on this will kindly indicate by raising their hands, all those in support of the article so that the Chair may recognize them and note them for recognition.

[Show of hands.]

The CHAIRMAN. Mr. Owens, Ms. Holtzman, Father Drinan, Mr. Rangel, Mr. Waldie, Mr. Conyers, Mr. Edwards, Mr. Kastenmeier. All those in opposition?

[Show of hands.]

The CHAIRMAN. Mr. Latta, so that we do not overlook you, Mr. Cohen, Mr. Butler, Mr. Hogan, Mr. Dennis, Mr. Smith, Mr. Fish, Mr. Railsback, Mr. Sandman. I have you, Mr. Railsback, and Mr. Smith and Mr. Seiberling.

Mr. FLOWERS. Mr. Chairman, you have a few more over here.

The CHAIRMAN. Mr. Flowers. Mr. Seiberling in opposition. Just so that we will not overlook anyone, Mr. Latta, Mr. Cohen, Mr. Butler, Mr. Hogan, Mr. Dennis, Mr. Fish, Mr. Railsback, Mr. Sandman, Mr. Flowers, Mr. Seiberling, and Mr. Mann. And those in favor, Mr. Owens, Ms. Holtzman, Mr. Kastenmeier, Mr. Edwards, Mr. Conyers, Mr. Waldie, and Father Drinan.

The opponents will be recognized for a period of approximately or less than 4 minutes, about 3 minutes and 45 seconds each. And those in support will be recognized for 6 minutes and 15 seconds each in support of the amendment.

I recognize the gentleman from Michigan for 6 minutes and 15 seconds.

Mr. CONYERS. Thank you, Mr. Chairman, and members of the committee.

We have said here again and again during the course of these deliberations that the one power of the Congress that might, in fact, be even more powerful than that which brings us here is the power to declare war. And I think that we might make an observation about the nature and importance of this proposed article from the outset, because as one who has worked with all of the members who have labored toward an understanding and a support of any of the articles, I want to extend first my commendations to the chairman and then to those who composed the "fragile coalition" because I have been as concerned as any about putting it together and keeping it together.

So far during these proceedings, no one has been required to make any compromises of conscience that have to do with those measures that should be considered as impeachable offenses, and I think that to do anything less would demean these proceedings and leave us open for criticism for all time in the view of those who will study in great detail our conduct during this historic event. And, so I bring this article forward not with some trepidation, because it seems to me first of all to have been that matter which underlies all of the articles that have been voted on so far, because we have stated time and time again that the reason for Watergate and its coverup, and the incursions into the various agencies and departments of Government was motivated by a necessity that was political.

Well. I would like to suggest to you that the reason that that political motivation arose in the first place was the fact of the Vietnam war, in which this Cambodian incursion is an incident, because this President, unfortunately, like the one before him, is to a greater extent a casualty of the Vietnam war. And I would point out to you that we need to state only the matter quite simply. Tapes are not required. It is not necessary that we go beyond the documentation that has been put together by the committee and analyzed. The President unilaterally undertook major military actions against another sovereign nation and then consistently denied that he had done so to both the Congress and the American people.

Now, my colleagues, I suggest that the consequences of that conduct are so enormous for us assembled here not to seriously consider this as an additional article, not to merely add articles upon articles but as one of the most important that go to the perhaps most important duty that befalls us in the Congress.

You know, many people don't know or have forgotten who has the authority to declare war in 1974 in the United States. Many people have forgotten that the Congress constitutionally has that sole authority. And so I would urge that we in an attempt to reassert those powers which we consider to be vital and precious, if the constitutional form of government is to prevail and continue and improve, that we give the gravest consideration to this article.

Now, I know that there is something else that is troubling us and I am constrained to speak frankly to it because there are members who, regardless of how much agreement that they may give to the arguments that will be presented by myself and the proponents, feel that perhaps they have some implication in the result of undeclared wars and I think a word should be said about it.

I don't think that we can absolve the fact that the Congress has failed to declare officially that war that has haunted us for nearly 10 years but that we can use this moment as a new beginning, as a point of departure where the Congress says from this moment on, from this day forward, we will reinstitute that law constitutionally asserted from the beginning that somehow during the course of previous administrations, I am frank to admit, has eroded and we find that that power is no longer ours and ours alone.

But on March 17, 1969, the President of the United States, and I might note less than 2 months after he had been given the oath of office, approved the beginning of bombing strikes in Cambodia which continued until August 15, 1973. But it was not until July 16 that Secretary of Defense Schlesinger, before the Senate Armed Services Committee, revealed formally that bombing had occurred in Cambodia prior to May 1970, the date of the American invasion or incursion into Cambodia.

The CHAIRMAN. The gentleman's time has expired.

The gentleman from Ohio, Mr. Latta, is recognized for 3 minutes and 45 seconds.

Mr. LATT. Thank you, Mr. Chairman.

Let me say that first of all, I think that we have to recognize that when Mr. Nixon took office, he had a very serious problem. We had over 500,000 American troops in South Vietnam. The casualties were heavy. We had hit-and-run activities by the enemy, going into sanctuaries that were not being hit. Action had to be taken to save American lives.

Listening to the gentleman from Michigan, I notice that he overlooked mentioning the fact that we didn't have very much dissent from the Cambodian Government. In fact, they indicated that publicly they couldn't say anything but they were giving us passive consent. And I think this is important to note. They were not opposed to what we were doing inwardly even though they might have expressed outwardly their displeasure.

We had a situation, a military situation that had to be taken. And I think the American people, especially the mothers and the wives of servicemen who are alive today, because of the action he took, would be asking us tonight not to vote an article of impeachment because this President took a decisive action to save the lives of their loved ones. And I think this is the crux of the matter. There are a lot

of things that go on in time of war, and this was a time of war, that you don't put on the front pages of every newspaper. I can recall back in World War II that there were a lot of things that went on that we didn't like after we learned about them that weren't put on the front pages of every newspaper.

This wasn't peacetime. This was wartime. And we had a President who was concerned about it, concerned about our losses, a President who wanted to get us out and to cut those losses, to use an expression of his. And now we are about to condemn him because he brought those troops home. He even brought home the prisoners of war.

I wonder whether or not they would be home today or whether we would still be losing American men in Vietnam if he had not taken this decisive action. It seems to me that we ought to stop, look and listen, that we don't bring up these articles just to inflame the minds of the American people as has been alluded to just recently in the Washington Post, that we really consider these items on their merit, and this is not a meritorious article for impeachment.

We have already taken some actions without my support in this committee which if adopted by the House and the President is impeached on the basis of the articles recommended to the Senate would set dangerous precedents and reduce the Office of Presidency to merely a choir boy for the Congress of the United States.

And I think it is important that we continue to have in this country coequal branches of government, that we don't reduce that Office of President to a choir boy, that we let him remain as Commander in Chief. It seems as though we forget that responsibility that is given to him under the Constitution. And a Commander in Chief sometimes has to take actions to protect the lives of his troops. And here we had a commander in action, a commander in chief——

Mr. DONOHUE [now presiding]. The time of the gentleman has expired.

Mr. LATTI [continuing]. Taking decisive action to save lives.

Mr. DONOHUE. The Chair will now recognize the gentlewoman from New York, Ms. Holtzman, for 6 minutes and 15 seconds.

Ms. HOLTZMAN. Thank you very much, Mr. Chairman. I would like to speak in support of this article, as a matter of great conscience and of the utmost seriousness.

I think that those who would argue that this is a matter of policy misunderstand the thrust of this article of impeachment because this article goes to this system of government and this article goes to the words of the Preamble of the Constitution: "We the people" and this article goes to a system of self-government where the people of this country through their elected Representatives, the Congress, can participate in decisions of substance to this country. There is no question that the decision to go to war or the decision to conduct a major war effort, the decision to spend millions of tax dollars, the decision to commit American lives, is a substantial decision and for a people who are a free people, a decision for the people ultimately to be involved in.

The decision with respect to the secret bombing of Cambodia was a decision in derogation of this system of free government and the participation of Congress.

I am not saying that if the secret bombings were made public that the Congress would not have approved it. Congress may very well have approved it. But it was the right of Congress to have approved it and it was the right of Congress to have known and it was the right of the people to have approved it. That is the point that is made here and that is the reason for the seriousness of this article and the seriousness of the President's actions.

I think it is very significant that there are many facts here that are undisputed. There is no question that the President himself ordered the secrecy of the bombing. General Wheeler has testified to that. There is no question about it.

There is no question also that the bombing took place, the secret bombing, was of a massive nature, 3,695 B-52 sorties, 105,000 tons of bombs dropped. There is no question that the President ratified and confirmed the concealment of this bombing from the Congress.

On April 30, 1970, the President stated, after we had already been bombing for over a year, "The American policy since then has been to scrupulously respect neutrality of the Cambodian people."

And then again on June 30, 1970, the President reiterated that for 5 years American and allied forces have preserved Cambodian neutrality.

But, even more serious, on February 25, 1971, after the bombing had gone on for almost 2 years, the President, in his foreign policy report submitted to the Congress, stated untruthfully that in Cambodia, "We pursued the policy of previous administrations until North Vietnamese action, after Prince Sihanouk was deposed, made this impossible." So, there is no question of the President's authorization of the secrecy, there is no question of the President's failure to tell the truth to the American people. There is no question that he ratified the submission of false reports to the Congress.

And there is also no question that there was no justification for this. The only justification offered by this administration was that somehow we would affect Prince Sihanouk's administration in Cambodia. Well, let us assume for the moment that that justification is warranted. But, Prince Sihanouk was deposed on March 18, 1970, and for 3 years thereafter this administration, including the President, lied to the Congress and lied to the American people without any justification.

It seems to me, Mr. Chairman, that the issue here is of gravity and great seriousness, and the issue here is whether or not the Congress can participate in decisions which it is given power over under the Constitution, the power to make appropriations and the power to raise and support armies, and the power to declare war. And there is no question that this President acted in derogation of that. And if we are to remain a free people, and if we are as a people to govern decisions over our lives and death, then we have to be able to participate in such decisions. We must give notice to this President and other Presidents that deceit and deception over issues as grave as going to war and waging war cannot be tolerated in a constitutional democracy.

Thank you, Mr. Chairman.

Mr. DONOHUE. The Chair will now recognize the gentleman from Maine, Mr. Cohen.



Mr. COHEN. Thank you, Mr. Chairman, and I will be brief on this particular issue.

The basis, as I understand, for this article is that this constituted a usurpation of power by the President, power properly belonging to the Congress. And I do not think that anyone here will contest that. I think the bombing was wrong, because it was done secretly, and it was done without Congress' consent.

But, while this usurpation may have taken place, I happen to believe that the usurpation has come about not through the bold power of the President, but rather on the sloth and default on the part of the Congress, because over the years, there was a good 10 years that Congress failed to take very strong action in this area in which we have the ultimate and sole control. So, what happened after the bombing was disclosed and what action did Congress take at that time? I can recall my first year in Congress standing in the hall listening to the countdown on the vote where that Congress finally determined to cut off the bombing in Cambodia. And I could not help but be impressed with the electricity in the air. For the first time, Congress was finally going to regain the powers that it had given up, again through its own sloth and default.

So, what happened is that last year Congress, rather than condemning the President for past actions, they actually went ahead and ratified it in my opinion. They passed legislation which would have allowed the President to continue to bomb for an additional 45 days.

Now, that to me was tantamount to ratifying a past act, and I cannot see us imposing a double standard upon the President of the United States after having some complicity in this act. We come awfully close to the margin when we pass a law which says it is all right to bomb just for another 45 days but after that you cannot bomb, and besides, we are going to impeach you for what you have done before.

Now, that is what happened. I know the gentlelady from New York did not share in that vote, nor did I, and a number of other members on this committee did not, but the fact of the matter is that Congress did have some complicity, in my opinion, and I would like to yield to the gentleman from Mississippi who wanted to speak on this issue and has not had an opportunity to request time.

Mr. LOTT. Thank you. I will be very brief.

I do want to follow up on your comments. Congress had another opportunity to act when we passed last year the so-called War Powers Resolution, but the effect of the actual wording of that resolution, in my opinion, and in others that have studied this question, instead of really restraining the President did actually authorize resumption of the Cambodian bombing that Congress had tried to end, so it is obvious to me that Congress has to share the blame here, and I think once again we must look at the results. President Nixon did not start this war but he ended it, and the Cambodian bombing obviously was one of the things that was used to bring it to a conclusion.

Thank you.

Mr. COHEN. I will yield to the gentlelady from New York.

Ms. HOLTZMAN. Thank you. I just wanted to respond to the point on ratification. When Congress voted to cut off the bombing on August 15,

Congress was not aware at that point of the secret bombing. The secret bombing was revealed on July 16, 1973, and the votes regarding the Cambodian bombing took place prior thereto. There has never been a vote in Congress which in any way could be construed to have ratified that secret bombing.

Mr. COHEN. I believe that an article appearing in the New York Times showed that Congress had some prior knowledge about bombing activities taking place in Cambodia, but that is one of the bases of the argument that has been going on for the past 2 or 3 days about the need for the "Plumbers."

Mr. DONOHUE. The time of the gentleman from Maine has expired.

The Chair now recognizes the gentleman from California, Mr. Edwards, for 6 minutes and 15 seconds.

Mr. EDWARDS. Well, thank you, Mr. Chairman.

Mr. Conyers says this is a troubling section. As a new matter, if this were brought to us for the first time—the totally unauthorized war by the President, when there was no outside danger to the country—it would be the grossest misbehavior, clearly impeachable.

Unfortunately, in this particular case, this is not historically accurate. The raids were a part of the undeclared war that began years before the Vietnam war. President Johnson was chiefly responsible for the huge escalation.

I recall the first vote on the Vietnam war in the House on May 4, 1965, for \$700 million of special appropriations, and only six of us voted against it. The Vietnam war had wide congressional approval for entirely too many years.

And then after that, quite a number of Democrats worked very hard for Senator Eugene McCarthy, chiefly because he said that he would end the war in Vietnam, while President Johnson made no such commitment. I might add as an aside that during those very difficult years, and they were very difficult years for the people who were working to get the United States disengaged from this war, we had very little help, no help whatsoever from a private citizen in New York, the lawyer, Mr. Richard Nixon.

But it is time to send the message to future Presidents and this President about undeclared wars. Congress alone has the power to declare war. The President does not have the power, and it is an impeachable offense to wage an undeclared war.

But since shortly before I came here in 1963, we had the Bay of Pigs which was an American invasion of Cuba, undeclared, clandestine. We had in 1965 the huge escalation in Vietnam. We had the Dominican Republic where the American marines landed, for the last time, I hope, in Latin America, and the last time I hope anywhere someone feels that we have to invade a small country to keep our order.

And then Cambodia, and the Cambodian incursion and the bombing in 1969 which was a massive deception of the American people.

It is common to say that Prince Sihanouk was a part of the deal, that he had agreed to it. I have never yet seen a statement from Prince Sihanouk to the effect that this is true. General Wheeler says that he had intimations or something like that from Prince Sihanouk. The only information I can find is from the Senate hearings back in 1969 quoting Prince Sihanouk at a press conference on March 28,

1969, in Phnom Penh. He said, and I will shorten it: "I wish to reaffirm that I have always been opposed to the bombing, that we have no other means than we have been using so far to shoot at the U.S. aircraft."

And in the rest of the statement he vehemently and indignantly denies the allegation that he is a part of any agreement for the Americans to be bombing the country for which he is responsible.

It is a problem, and certainly Members who were chosen to be told about the bombing in Cambodia were very carefully selected. They were selected so that they would keep quiet about it, apparently, and in the Senate hearings, Senator Symington said:

I have been on this committee, this is my 21st year and I knew nothing whatsoever about the secret bombing in Cambodia. I put up money, and apparently nobody knew about this except maybe two or three Senators at the most. If we are asked to appropriate money for one thing, and it is used for another, regardless of its effectiveness, that puts us in a pretty difficult position. I think personally it is unconstitutional because you dropped over 100,000 tons on this country and I had no idea that you dropped even one, nor did the other members of this committee, except those chosen few, all of whom, I might add, all supported the war, which I did once, and later changed in 1967.

But Mr. Chairman, overriding everything else is our responsibility in connection with the Constitution, and these proceedings we always get back to this basic document that is supposed to determine how we behave ourselves in this country, and how we are supposed to govern this country, and how Congress is supposed to behave and the executive department is supposed to behave. It gives to Congress alone—not to the executive department, not to the President, not to the Pentagon—the power to make war; and the Presidents are not supposed to make war without going to Congress first and getting permission by an act of Congress.

I am going to support the amendment and the article offered by the gentleman from Michigan. He has been a leader in this important area of our national life for a long time. I compliment him for his leadership, and I urge an aye vote.

Mr. CONYERS. Would the gentleman yield?

Mr. EDWARDS. Yes, I yield to the—

Mr. CONYERS. I appreciate his comments, and I would like to contribute this supplemental point of information. Prince Sihanouk of Cambodia, during the last 27 months of his regime, filed 109 protests to the United Nations against the bombing, so that there cannot be argued that there is no information as to whether he acquiesced or not.

Furthermore, just ask yourselves, have you ever heard of anybody approving getting bombed, a leader or a citizen? I think that is an absurd suggestion to begin with.

Now, in connection with the possibility that we may have wittingly or unwittingly ratified the President's conduct in Cambodia, I would like to point out to you that the consideration of this article will determine whether or not we ratify the President's conduct. This is the first time, gentlemen and ladies, that this matter has been before the Congress and it is before this committee.

Mr. DONOHUE. The time of the gentleman from California has expired.

The Chair now recognizes the gentleman from Virginia, Mr. Butler, for 3¾ minutes.

Mr. BUTLER. Thank you, Mr. Chairman.

I requested this time because I share with many members of this committee concern about the question that has been raised and rather than address myself to some of the arguments I think I will use my chief resource person on the subject of Cambodia, the gentlelady from New York, if she will help me for a moment.

The references were made to the Members of the Congress which were aware of these bombings and I would ask you if you would tell us what the testimony is with reference to that.

Ms. HOLTZMAN. Well, I thank the gentleman.

Mr. BUTLER. Please understand that I am not asking for an argument. You know—

Ms. HOLTZMAN. I understand. I thank the gentleman for his kind words and I will try to be of assistance.

There is apparently some testimony that the following persons, according to the Defense Department, were given information about the bombing. Senator Russell—

Mr. BUTLER. Well, now—

Ms. HOLTZMAN. I would just list the names.

Mr. BUTLER. What was Senator Russell's capacity at the moment?

Ms. HOLTZMAN. He was chairman of the Appropriations Committee in the Senate.

Mr. BUTLER. All right. Thank you. And next?

Ms. HOLTZMAN. He is now deceased. Senator Dirksen, who is now deceased was the minority leader according to the Defense—

Mr. BUTLER. I understand that. Thank you. You are not vouching for these.

Ms. HOLTZMAN. Senator Stennis, chairman of the Armed Services Committee, says that he does not remember being advised of the massiveness of the bombing.

Mr. BUTLER. But the Defense Department did testify that Senator Stennis was aware of it?

Ms. HOLTZMAN. Yes. He said that he did not recall specific briefing and certainly does not remember being advised of the massiveness of the bombing. That is not a quote but its essence.

Mr. BUTLER. Who else does your list have?

Ms. HOLTZMAN. Representative Arends, ranking Republican, Armed Services, cannot remember being told but might have been.

Mr. BUTLER. But the testimony of the Department of Defense was that Representative Arends was advised of it.

Ms. HOLTZMAN. That is their statement, yes. And Representative Rivers, chairman of the Armed Services Committee of the House, is now deceased.

According to the President, Representative Hébert, presently chairman of the Armed Services Committee of the House.

Mr. BUTLER. Thank you.

Ms. HOLTZMAN. But if I could—

Mr. BUTLER. Did Mr. Kissinger also testify to the effect that selected Members of the Congress had been informed of the bombing strikes?

Ms. HOLTZMAN. I am unaware of whether or not he testified to this

but I think that the testimony of the persons is unclear as to exactly what they were informed with respect to the bombing.

Mr. BUTLER. I thank the lady, the gentlelady.

I would ask our staff resource person here, if you will—your name is?

Mr. WALKER. J. Stephen Walker.

Mr. BUTLER. Mr. Walker. Does your information indicate that any other persons in the leadership of the Congress were advised of this?

Mr. WALKER. We have information which indicates that Representative Morgan, chairman House Foreign Affairs Committee and Representative Mahon, chairman, House Appropriations Committee were also advised.

Mr. BUTLER. Mr. Ford?

Mr. WALKER. Gerald Ford, former minority leader in the House of Representatives was advised. The committee should also note that none of these people have the administration's assertion that they were included in the group of specially selected Members of Congress who were briefed on the "secret" bombing of Cambodia.

Mr. BUTLER. All right.

Mr. WALKER. The present recollection of the details provided in the briefings varies however from member to member.

Mr. BUTLER. All right. Now, does your research into this matter indicate that any limitations were placed on the membership of Congress as to whether they could—should or not pass this information on or anything of that nature.

Mr. WALKER. We have no direct evidence concerning the existence or nonexistence of any White House policy or restriction concerning the dissemination of the information provided in these special briefings. The record should reflect however that no attempt has been made to interview the Members involved or the White House officials, such as former Secretary of Defense Melvin Laird, who conducted the briefings in order to ascertain what guidelines or procedures, if any, were instituted by the President to govern these briefing sessions.

Mr. BUTLER. I thank the gentleman.

Mr. Chairman, I think the evidence indicates pretty clearly that the Congress through its leadership was kept advised of these incidents and that if Congress through its leadership failed to pass it on, that is a responsibility the Congress must share with the President. We can't impeach ourselves—yet.

Mr. DONOHUE. The time of the gentleman from Virginia has expired. The Chair now recognizes the gentleman from California, Mr. Waldie.

Mr. WALDIE. Thank you, Mr. Chairman.

Mr. DONOHUE. Six minutes and 15 seconds.

Mr. WALDIE. Mr. Chairman, it seems to me in this process of impeachment what we ultimately are seeking to do is a constitutional process where at the conclusion, we will have redefined the power of the President and we will in that redefinition hopefully have limited that power because if we impeach, we will have come up with a conclusion that the power has been abused and that there has been too much power accumulated in the executive branch.

If that is so, it would just seem extraordinarily unusual for this committee and the Congress in their examination, a historical exam-

ination, really the first, of the Presidential power to ignore the exercise of the war power and to determine if in fact the war power has not been abused and if the President has not accumulated too much authority in that regard.

Now, in this process, where I am most troubled, and that troublesome aspect has just occurred to me of late in the proceedings, it is difficult to separate Richard Nixon, the man, from Richard Nixon, the occupant of the executive branch, whose powers are being limited and hopefully circumscribed, and in this instance particularly it is difficult because I am a believer in the lesson of the Pentagon Papers and if that lesson had any message to it at all, it was that the war power as exercised by most modern Presidents has been abused and it was abused terribly by a President of my own party, the predecessor of this President, in the very areas in which we are examining exercise of this war power by this President. That is, in deception and concealment.

Now, if President Johnson's exercise of the war power had not been characterized essentially by the deception and concealment that was revealed in the Pentagon Papers, it is entirely probable that had the country known what truly was the information upon which policy was being made in Southeast Asia, that there would have been no way that President Nixon would have been presented with the tragedy of Vietnam that was presented to him when President Johnson left office.

But the fact of the matter is the abuse of the war power by President Johnson in deception and concealment created the problem that President Nixon sought to extricate the country from, but in his exercise of the war power in that extrication process, he, too, resorted to deception and concealment.

Now, if you are only examining not as Richard Nixon and not as Lyndon Johnson but as the Congress determining whether a redefinition of the power of the Executive and in this particular power the war power ought to be undertaken, I think you have to conclude that where deception and concealment is utilized in order to acquire support for a war policy, we ought to draw a line and say in the future, as we redefine this power of the Executive, deception and concealment to obtain support from the American people will not be tolerated. And if that is the case, clearly the deception and concealment of this President in this instance designed to obtain support from the American people which would not have been forthcoming perhaps had he in fact reported to them the extent of the bombing of Cambodia is not acceptable.

Now, if you can assume that had the President reported to the American people what he was doing and the reasons for him having done so they would have supported it, then you have to ask yourself this question: Why did he not then report it? I personally am inclined to believe they may very well have supported that effort. The President says he did not report it because Prince Sihanouk would not have permitted the bombing to continue if it had been known to the American people.

Now, that is deception and concealment. That is an abuse of the war power. And as we redefine the powers of the Executive in the hope that we limit those powers, if there is ever a power that ought to be

limited, it is the war power and in this very reasonable and minor area no President in the future in the exercise of the war power shall be permitted to resort to deception and concealment in terms of his responsibility and duty and obligation in dealing with the American people.

I yield to Mr. Conyers the balance of my time.

Mr. CONYERS. I thank the gentleman for his very acute perceptions on this subject and I would like to point out that I don't think anyone in making a decision of whether to support this article or not on this committee could begin to assert that telling a few Members selected throughout the Senate about the bombing would constitute the notice that is required of such a high constitutional level, especially when the President was at the same time through separate reporting plans intentionally misleading not only the American people but the Congress as well.

Now, a historian, Henry Steele Commager, made one statement that I would like to attach I think appropriately to the considered judgments of my friend from California. He said:

It would be a pity to impeach Mr. Nixon on grounds that are technical or vulgar if such offenses are all that is involved. The Nation could afford to wait 3 more years for the moment when Mr. Nixon would be automatically retired to that private life which he so richly merits.

Mr. DONOHUE. The time of the gentleman from California, Mr. Waldie, has expired.

The Chair now recognizes the gentleman from Maryland, Mr. Hogan, for 3—

Mr. HOGAN. Thank you, Mr. Chairman.

Mr. DONOHUE [continuing]. For 3¾ minutes.

Mr. HOGAN. Thank you, Mr. Chairman.

I oppose this article and I might say it is comfortable being back in the bosom of my friends. My friend from Michigan, Mr. Conyers, said that whoever heard of anyone approving getting bombed? Now, implicit in this statement is that the bombs were dropped on Cambodian citizens and that is not the case. Some of us have been there to see the jungle areas, sometimes triple canopy jungle, and there is no way to really see where the Vietnam border and the Cambodian border and the Laos border end or begin.

Now, we should not lose sight of the fact that for 5 years the Communists, both the North Vietnamese soldiers and the Viet Cong, were using these Cambodian sanctuaries to attack the allied troops in Vietnam. For 5 years we let them get away with it.

Now there is no testimony from any source indicating that Prince Sihanouk did not approve these bombings. They weren't bombing his civilians. They weren't bombing his villages. They were bombing Cambodian jungles just over the border from Vietnam where Communist soldiers were using launching bases to further the war. If the Cambodian Government had opposed this, they had every right to go to the United Nations and protest it.

Now, Members of Congress, as has been indicated by my friend from Virginia, knew about this from the beginning. But let's recall that virtually every single President has engaged in military activities without the prior consent of Congress. The Korean War was called

a "Police Action." There never was a declaration of war. And I don't think it would have been justifiable to impeach President Truman on that basis.

All the military experts agree that the Cambodian bombing helped to accelerate the end of the war and the return of the prisoners of war. But even if we do conclude that the President's actions in this instance did exceed his constitutional authority, no one can say that he did not act except in what he perceived to be the best interests of his country.

There was no gain, there was no coverup, there was no effort to evade responsibility for actions of he and his associates as we have seen in some of the other material coming before us. He was doing his duty as he saw it to protect American troops, to end the war, and to use bargaining power to get our prisoners of war home.

I think it would be an American tragedy if he were impeached on this basis.

Mr. DONOHUE. The Chair will now recognize the gentleman from Indiana, Mr. Dennis.

Mr. DENNIS. Mr. Chairman and members of the committee, this decision to bomb Cambodia was a matter of high military and diplomatic policy made by the President in his capacity as Commander in Chief in order to attack an enemy sanctuary and protect troops in the field in an ongoing war which he had inherited. It was made with the knowledge of the leadership of the Congress of both parties. It was made with the knowledge of the reigning principals of the country involved. It was made in a war which basically was supported by a great majority of the Congress of both parties for a great many years and was supported at that time. It was made in accordance with plenty of past practice such as the Bay of Pigs which has been mentioned, and to be honest about it, if the same thing were done tomorrow in a popular war, nobody would say anything about it now.

If the Congress wants to legislate in this field, it can, as it made a rather clumsy effort to do last year. But to at this time use the weapon of impeachment against the President for this action which was taken in the past and supported at the time by almost everyone involved would be both unrealistic and unfair and I do not believe for one moment that this committee will seriously consider doing so.

I yield back the balance of my time.

The CHAIRMAN. The gentleman from New York, Mr. Smith, is recognized for 3 minutes and 45 seconds.

Mr. SMITH. Mr. Chairman, the other night when we started this debate I said that as far as I was concerned I did not think that clear and convincing proof of the President's direct involvement in all of the charges that had been made against him had been brought forth before this committee in the months of our efforts and the mountains of evidence that we have looked at. But, I was bothered in one area, and that was this area of the bombing in Cambodia in which the proof seemed to be clear and convincing to me that the President directly ordered bombing in Cambodia, and that it be concealed generally from the American people and generally from the Congress. And it does bother me, and I congratulate the gentleman from Michigan, Mr. Conyers, for bringing this article forward.



Now, I am going to vote against the article because there are too many aspects of the situation which are still not clear, and perhaps will not be clear for years. I think perhaps this committee should have gone into this matter more deeply than we did. I think we should have pursued perhaps more vigorously the quest for information. But, we have heard about the President's duty to inform the Congress about military moves. This was a move. One question is was this militarily justified, and the consensus seems to be that it was. It did save American lives.

Did Prince Sihanouk acquiesce in it? Well, the evidence there appears to be that he did. Now, we were told at a briefing of Members of Congress that he acquiesced in it but he said since I am a neutral, if you tell anybody I will deny it. He was bothered by the fact that North Vietnamese and Vietcong were living on his eastern borders. The price of his neutrality was to let them do it or they were going to take over the country.

Now, the evidence indicates that he did acquiesce because I looked at some of these 109 protests made by the permanent member, the permanent Commissioner of Cambodia to the United Nations, and they were all about helicopters, all about sky hawks, and there is not one, as I understand, about any B-52 bombings. Ms. Holtzman told us how many B-52 bombings took place after the figures came out, and they tell me that although it is hard to see a B-52, everybody knows when they have been around because the Earth jumps and shakes, and apparently there is not one protest on the part of the Prince Sihanouk ambassador at the United Nations in regard to that bombing, and it was that bombing that was the beginning of the bombing that was secret.

And so I think that perhaps our passage of the War Powers Act, the passage by the Congress and the signing by the President has made this question moot as to future Presidents.

I agree with Mr. Waldie, the gentleman from California, that the debate here will offer guidelines to future Presidents. The mere fact that we are debating this matter, the mere fact that we are talking about it, the mere fact that we are agonizing about it a little bit, it is a troublesome matter, and there are too many aspects that are unknown, and I am going to oppose it. But I think we should, this committee should have gone into it more deeply than we did.

I yield back, Mr. Chairman.

The CHAIRMAN. The time of the gentleman has expired.

The gentleman from New York, Mr. Fish, is recognized for 3 minutes and 45 seconds.

Mr. FISH. Thank you, Mr. Chairman.

I think, Mr. Chairman, the question before us naturally is, is the unauthorized bombing an impeachable offense. Was it treason? I do not believe so. Was it bribery? Clearly not. Therefore, is it a high crime? And the high crimes that we have been talking about these past 5 days are crimes that would show a contempt for the Constitution.

Now, we know where the authority to declare war lies. It is in the Congress. Therefore, I think the question comes down to whether this unauthorized bombing was a contempt of this institution, the Congress of the United States.

The fact is that we in the Congress share a responsibility. The facts of the lack of concealment have come out in this debate, and I do not think it was necessary to characterize not only the political leadership but the committee leadership in both parties, in both the House and the Senate as having been carefully selected. But, these men did know, on our behalf, and so the Congress does have this responsibility.

I liken this particular proposed article to that which concerned unauthorized impoundments. In both cases, as has been said in this debate, the fact was that for decades the Congress itself was giving ground to the Executive, in both cases the Congress has acted far too slowly for many, but the fact is today it has acted with the budget control and the anti-impoundment legislation which is now law, and with the War Powers Act which is now law.

So, Mr. Chairman, I cannot absolve myself or my colleagues for our part of the blame by heaping it exclusively on the President.

I yield back the balance of my time.

The CHAIRMAN. The gentleman from Illinois, Mr. Railsback, is recognized for 3 minutes and 45 seconds.

Mr. RAILSBACK. Mr. Chairman, I cannot help think what short memories we have. I was a part of a Republican task force which, in 1968, visited some of the northern university campuses, and I remember we visited Harvard, Northeastern University, and MIT. It was shortly after the Harvard bust that we visited that campus and we interviewed people that were with the SDS, we interviewed the student government leaders, and we interviewed a group called the Afro-Americans, and we listened to the most bitter frustration, disillusionment, concerns, distrust about that particular establishment. And they conveyed to us in no uncertain terms that the disillusionment and frustration which they felt was caused by false and misleading statements that had been made by the different administrations one after the other.

The fact that they had been told that we were going to be out of Vietnam in another 6 months, and they had been promised that the war was almost over, only to find that there was an even greater commitment of American troops.

Recently many of us had a chance to read a book by a Pulitzer Prize winner, Mr. David Halberstam who wrote about our involvement in Southeast Asia with particular reference to the Kennedy and Johnson administration. I want to refer to just one particular reference that he makes. "Machismo," says Halberstam, "was no small part of it." Johnson "had always been haunted by the idea that he would be judged as being insufficiently manly for the job, that he would lack courage at a crucial moment." Westmoreland and McNamara are guilty because of their misplaced confidence in ground troops. LBJ was the real war criminal when he deceived the American people in July 1965 by deciding to send over 100,000 to 125,000 troops, but telling the American people that it was only 50,000, and that it "does not imply any change in policy whatever." In fact, notes Halberstam, "it was the beginning of an entirely new policy which would see what was the South Vietnamese war become primarily an American war."

I suggest to you that LBJ was no more accountable probably than the President preceding him, and the President preceding that Presi-

dent, that he was no more accountable than this Congress, those of us that sat in this Congress, approved policies, failed to exercise congressional oversight.

It seems to me ironic that when the Ellsberg papers came out the Nixon administration was concerned about that leak not because they revealed things that had happened under the Nixon administration, but because of the decision and policy decisions that had been made under the Johnson and Kennedy years. What an irony and how foolish we would be to impeach this President for that particular incident when the whole South Vietnamese involvement was one series of mistakes, one right after the other.

The CHAIRMAN. I recognize the gentleman from New Jersey, Mr. Sandman, for 3 minutes and 45 seconds.

Mr. SANDMAN. Mr. Chairman, I would like to address my remarks to the 37 other members, and I would just like you to remember one little thing that I am going to say to you. Do you want to be remembered as that part of that Congress that tried to impeach a President of the United States because he did something which ended a war that his two predecessors could not do? That is a pretty good question.

And I said yesterday that one of the closest admirers that the previous President had I think was myself. I thought he was a great man. I can remember when President Johnson, the first year I was down here, invited 40 freshmen to come over to the Oval Office and sit down with him. And it was at that particular time that he was making up his mind to accelerate the bombing. I know that history is going to be very unkind, in my mind, to what was a great man and a great President. He revealed to us the advice that he had received from all of the generals, General Westmoreland and all of the rest of them, all on one piece of paper with their recommendations, and he said to us, you know, I never went to West Point, I am not a general, and he said I don't know as we have any generals in this room or any West Pointers either. But, these are the best military minds in the world, and I want you to look at their advice to me as the Chief Executive, and on every piece of paper, about 40 of them, the recommendation was to accelerate, and he said, what would you do, I am asking you.

There was not one that gave a dissenting opinion. There were 40 people in that room besides the President and every one of them a Congressman, and hindsight is always better than foresight, isn't it? And a Monday morning quarterback could have made a better guess, I suppose, but based upon the best information available the President acted.

It was not the right decision, as time revealed, and he is not going to go down in history as a man who did a very good job with that war. I remember when he made his farewell address over in the Longworth Building, and I guess everyone does too, a very sad man, a broken-hearted man because on his conscience was the death of thousands of people, and the one thing he wanted to do more than anything else in the world was to end that war and he could not do it.

Then along came Richard Nixon with all of the faults that he may have had. He ended that war. One-half million people were in Southeast Asia when he became President. Fifty thousand Americans lost their lives there, and nobody is dying in Southeast Asia today. And

so we want to reward him by impeaching him because he did not tell everybody what he was going to do before he did it. And this is an awfully funny way to run a war, isn't it? Concealment. Every war is run on concealment. You do not tell the opposition what you are going to do before you do it.

I voted for the war powers amendment and so did everybody else. It is a good thing. But, let us not forget the commencement of activities in Vietnam was the 81st time an emergency power was exercised by a President. And I say to you, let us not be remembered because we want to reward this man by throwing him out of office.

The CHAIRMAN. The time of the gentleman has expired.

I recognize the gentleman from Wisconsin, Mr. Kastenmeier, for 6 minutes and 15 seconds.

Mr. KASTENMEIER. Thank you, Mr. Chairman, I will not take all of that time, and will yield some of my time to the proposer of the article, the gentleman from Michigan subsequently.

I think it is unfortunate that we are in the position of technically reviewing the war in Southeast Asia. This is really not the point of this article. But, very candidly, this article will not succeed, it will not be adopted either by this committee or the Congress. Nonetheless, I support it. I think the essence of the article is as fundamental as the three we have already adopted if not more so.

I appreciate the comments of my colleagues, particularly the gentlemen from California, Mr. Edwards and Mr. Waldie to the effect that the genesis of concealment and deception did not originate with Mr. Nixon. There may have been culpability in the past, by Presidents Kennedy and Johnson. However, they are no longer President and, in fact, have long since gone to their graves.

The question is really a constitutional one. If, in fact, the President did issue false and misleading statements, engage in deception and concealment concerning a matter of such great importance to the country as the conduct of war in which thousands and thousands of Americans were killed, irrespective of how Americans now view that war, and then, in fact, he has committed an offense for which he is accountable.

I would only say that going back to the earliest times, one James Iredell, one of the Framers of the Constitution, stated the proposition that the President, and I paraphrase, must certainly be punishable for giving false information to the Senate. He is to regulate all intercourse with foreign powers, and it is his duty to impart to the Senate every material intelligence he receives. If it should appear that he has not given them full information, but has concealed important intelligence which he ought to have communicated, and by that means induced them to enter into measures injurious to their country in which they would not have consented to had the true state of things been disclosed to them, in this case I ask whether an impeachment for a misdemeanor would lie.

And so we have come to modern times and the situation that confronts us at this moment. In terms of what the Constitution requires, in terms of accountability of the President, we must adopt article No. IV.

Mr. McCLOREY. Would the gentleman yield for one question?

Mr. KASTENMEIER. I yield to the gentleman from Illinois.

Mr. McCLODY. A great deal of information we received was classified, but is it not a fact that information regarding the bombing was revealed to selected members of the Senate? That is my recollection of the information we have received.

Mr. KASTENMEIER. The gentleman is correct, and some of the colloquy between the gentlewoman from New York and the gentleman from Virginia affirms that. However, I think history will record that those several selected individuals were people fully committed to a course of action involving war and did not necessarily represent the people in the sense that the Congress as a whole, if imparted this knowledge, represents the people, and I would suggest that imparting that knowledge to a few select individuals, whose views conformed with that of the administration, did not constitute imparting full information to the country and did, in fact, constitute further concealment thereof.

I yield to the gentleman from Michigan.

Mr. CONYERS. I thank the gentleman from Wisconsin for yielding, and I would pose this question to my colleagues because I appreciate the seriousness of the considerations before us. In a way this article cuts differently from any of the others, and I would be the first to concede that were the President not being considered for impeachment on other grounds, it would be extremely difficult to have this consideration before us. But, history has brought them together, ladies and gentlemen. The coincidental meeting of this consideration of war powers has arrived at the same time that the revelations of Watergate and make this vote inescapable upon us. And I would only urge every member that if he or she feels that the record that we build should not include and recommend this article of impeachment, legitimately, not to add onto a bill of impeachment unnecessarily, but responsibly to preserve and reclaim the probably most important single power that the Constitution vests in this Congress, and I urge your support of this article.

Mr. KASTENMEIER. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The gentleman from Alabama, Mr. Flowers, is recognized for 3 minutes and 45 seconds.

Mr. FLOWERS. Thank you, Mr. Chairman.

I don't object to the fair consideration of this, I will say to my friend from Michigan, I only object to anybody voting for it.

This is a bad rap for President Nixon and we ought to recognize it as that.

Let's remember what the President's purpose was in Vietnam or Southeast Asia, and it was to get us out of there and let us remember those advisers that advised him in the early spring of 1969 earned their stars under President Lyndon Johnson, a Democrat, if you will.

I don't intend to demean the author of this article in any way and I honor your conscience, Mr. Conyers, and those others who join in this effort. But by the same token, you all don't have a corner on conscience in this or in any consideration we have here and by the same token my conscience dictates to me that I speak out against this article of impeachment.

We might as well resurrect President Johnson and impeach him posthumously for Vietnam and Laos as impeach President Nixon for

Cambodia. How many articles of impeachment were filed against President Johnson for what he had done in getting us into the war in Southeast Asia? I don't recall that any were. I was not a Member of Congress during his administration. We might as well resurrect the memory of John Kennedy for the Bay of Pigs. President Eisenhower had his U-2 incident. President Truman in Korea.

I don't know. We could go back almost throughout history, and remember the Alamo. I don't remember who the President was—but Davey Crockett may have been a member of CIA.

Congress has acted. We have passed the war powers limitation bill and I believe that is action setting forth our judgment on this situation. We don't need to spell it out any further.

We ought to vote this down by a large margin. I notice when you say Vietnam a certain number of people still jump up. Let's see if they do on this. I hope not, because this is a bad rap for President Nixon and I call on all members of this committee to vote against this article.

The CHAIRMAN. The gentleman from South Carolina, Mr. Mann, is recognized for 3 minutes and 45 seconds.

Mr. MANN. Thank you, Mr. Chairman.

It is unfortunate that the relationships between the President and the elected representatives of the people in Congress have deteriorated down over these 198 years to the point that the President cannot confide in the Congress and that Congress whose duty it is to declare war.

That situation exists, ladies and gentlemen, and it exists today. And we look ourselves straight in the eye and decide what can we do about it?

To further exacerbate that problem by recriminations for past conduct is not the answer, unless we can attribute to that President a motivation that is treasonous, and none of us would do that.

There is no neat way to fight a war and the judgments made under those circumstances can only be viewed in the light of history and the judgments of Congress as it failed to declare war. What were we doing in Vietnam without a declaration of war? Appropriating funds, tacitly approving the commitment of troops.

We have lately undertaken a definition of the powers, the respective powers of the President, and the Congress, and so we should. And we should refer to article I, section 8 of the Constitution and see that there are many responsibilities upon the Congress with reference to the operation of our armed services. To make rules for the government and regulation of the land and naval forces and other powers. So let us direct our attention to improving and restoring those rules and regulations, those relationships, those trusts, that will not cause us to engage in a confrontation when that important item of national defense or national security is involved.

The CHAIRMAN. The gentleman from Massachusetts, Father Drinan, is recognized for 6 minutes and 15 seconds.

Mr. DRINAN. Thank you very much, Mr. Chairman.

Let's see first what this document or article does not do. This document takes no position whatsoever on the merits of the war in Indochina. We are not asking hawks and doves to vote along that line

today. This resolution makes provision for those who feel as others do who have spoken here. If they feel that the bombing in Cambodia saved American lives, they can continue with that conviction and still vote for this resolution today.

This resolution relates in its essence to secrecy, secrecy in the executive branch of government. General Wheeler testified on July 30, 1973, that the President personally ordered him not to disclose the bombing in Cambodia and I quote General Wheeler: "To any member of Congress."

This article is very narrow. This article means that we don't want a President authorizing or ratifying the concealment in the Congress of the facts about a certain situation concerning which the Congress must act. The Founding Fathers I think we should not made a provision in Article I that the Congress itself must publish a journal except in a narrow exception the journal could be secret if the Congress so decided. There is no provision for secrecy in the executive branch of government whatsoever in the Constitution. The whole history of secrecy in government was the very thing that the Framers of our Constitution wanted to undo.

Secrecy means that we in the Congress don't get the essential information that we need in order to legislate. In the area of war, Madison said that the war-declaring power in Congress must include everything necessary to make that power effective.

The administration deceived the Congress over 4 years for this reason, that there is absolutely no request from March 1969 to August 1973 by the administration for appropriations for the war in Cambodia; \$145 million was spent. Is that wrong? Can you say that this is all one war? No communication to the Congress. Even if, and this is in dispute, somewhere it was told on a secret basis to four or five people in the Congress, that we have something going in Cambodia, the members of this very House were deceived because, as Senator Symington said: "We authorized \$140 million not for war in Cambodia but for war in Vietnam."

At least now the Congress has a right to know. And here are some of the questions that the Pentagon refused to testify to at the hearings a year ago in the Senate.

Who authorized the falsification of documents? What reason is there now long after the war has ended for the continuation of the secrecy in this matter? Falsification of military documents appears to be a clear violation of article 107 of the Uniform Code of Military Justice.

Melvin Laird himself in 1973—was Secretary of Defense in 1970 when these things occurred, and in 1973 he denied knowledge of it. Furthermore, why did the military feel that they could not trust their own highly classified reporting system? All B-52 strikes are carefully coordinated with special photo-intelligence and this was done outside of that ordinary system for reasons that the Congress has not been told.

To repeat, I think this is a very narrow article. It does not really involve what Prince Sihanouk thought, whether he acquiesced or did not. It does not involve our assessment of the Indochina war. All it says is that secrecy in Government without justification or excuse can in this instance be an impeachable offense.

Even the acquiescence of the Congress in some of the things that you have heard today is immaterial. The President himself told General Wheeler not once but, as General Wheeler said, six times that no one shall ever hear of this bombing in Cambodia.

Mr. Jerry Friedheim, the spokesman for the Pentagon, in July 1973 said these sad words. He spoke of the falsification of documents. He spoke of the erroneous information that he transmitted to the Congress. And he said just a year ago, "I knew at the time it was wrong and I'm sorry."

Did the President ever reprimand any of those who deceived the Congress? No; he ratified their conduct. And those who vote against this article will be saying, in effect, that the President, our next President, any President, can deceive the Congress, can have secrecy in the executive branch, can try to justify it by saying that we didn't want to embarrass some foreign prince, but that goes to the very heart of what the separation of powers is all about.

Those who want the Congress to stand up in the future will say, I am never going to allow another President to ratify the concealment from the Congress of basic facts and give to the Congress false and misleading statements about anything domestic, about anything foreign, especially about bombing operations in a neutral nation. I hope that all of us will say with Jerry Friedheim that we knew at the time it was wrong and we are sorry.

The CHAIRMAN. The time of the gentleman has expired.

The gentleman from Ohio, Mr. Seiberling, has 3 minutes and 45 seconds.

Mr. SEIBERLING. Thank you, Mr. Chairman.

I find myself in agreement with the arguments of the proponents of this article on the issue that gave rise to it and that issue is the falsification of information, the misleading of Congress, the failure to consult Congress on a matter as grave as an act of war.

On the 19th of March 1969, President Nixon approved the secret bombing of Cambodia and ordered that information on it be limited to those who had an absolute need to know.

A year later, in April of 1970, the President made this statement in a public address to the Nation:

"American policy has been to scrupulously respect the neutrality of the Cambodian people."

That statement was a bald lie.

Now, as Father Drinan has said, the heart of this issue is the secrecy, the falsification of information, and thereby the deprivation of Congress of the ability even to exercise its constitutional powers over appropriations and over making war. And I certainly agree that just informing a few individuals in the Congress is not informing the Congress.

Yet, I also find myself in agreement with the statements of some of the opponents of this resolution, particularly Mr. Flowers, Mr. Mann, Mr. Railsback, and Mr. Cohen. They have shown a sensitivity to the situation that we are in because of the fact that Congresses have not always lived up to their responsibilities, and have allowed this sort of thing to go on.



My mind goes back to 1940 when President Roosevelt ordered destroyers to escort ships to Great Britain, a belligerent, which was an act of war, and yet I thought that was a great idea at the time.

Now, there are a couple of other reasons why I am opposed to this resolution. Here [holds up documents] is a collection of documents that has been published that the committee reviewed on this issue and here is a question of—here is a collection of the documents that the committee reviewed but that have not been published, and the reason they haven't been published is because the administration refuses to declassify them. They are top secret. And yet there is no justification for the secrecy. The war is over. But they also, by doing that, prevent us from using as evidence in this case before the public some of the documents which tie the President into this very act of concealment. So the concealment is continuing and prevents us from effectively presenting the facts.

And there is one other reason, and that is that the Congress has passed the War Powers Act and laid down some guidelines so that from here on out every President is on notice that it is the law, the black letter law, not just the Constitution, that he must advise every Congress as soon as possible, preferably before he initiates military action.

I yield to the gentleman from Pennsylvania, Mr. Eilberg.

The CHAIRMAN. Fifteen seconds.

MR. EILBERG. Mr. Chairman, I simply would like to associate myself with the remarks of the gentleman from Ohio. I appreciate his yielding to me and I would like to add that I suspect that the lessons of this era have been well learned and are extremely unlikely to occur again, that my concern in impeachment is with those events that are continuing in nature and that our focus should be in that area, and I am particularly concerned with the classified information which we cannot use.

MR. SEIBERLING. May I complete my statement?

I feel particularly deeply about this. I am not known as a hawk in this Congress, to put it mildly. I voted against continuing the bombing of Cambodia last summer for even 1 more hour. Kent State University is in my district. Four Kent State students died 4 years ago because of the fact that the President of the United States again abused his power and invaded Cambodia without consulting the Congress. And if there is anything that we can do, that we haven't done, to stop that from happening again, we should do it. But we should not use our impeachment power to impeach this President for acts of the sort other Presidents have taken with impunity the same sort of action and for which the Congress bears a very deep measure of responsibility.

The CHAIRMAN. The time of the gentleman has expired.

The gentleman from Utah, Mr. Owens, is recognized for 6 minutes and 15 seconds.

MR. OWENS. Thank you, Mr. Chairman.

It is true that no one is being fooled during the course of this debate on the possibility of passing this article of impeachment. A vote for this article I submit is responsible, is intellectually defensible, and I think it is merited by the fact but it is obviously not going to pass.

In order to execute the function to declare war, Congress must be provided with accurate information by its Commander in Chief. This

is a basic axiom with which I think almost no one agrees. In this particular situation—with which no one disagrees, I am sorry. I thank the gentleman from Maryland.

In this situation, the President misled the public for a period of 4 years. Mr. Hogan, who just now corrected me, I correct him to say when he said there was no coverup that there was a coverup for 4 years of the true facts of this war in Cambodia.

Others say this isn't necessarily unique, and some have said you are attacking the wrong person. It is President Nixon who wound down this war, a fact which I admit, for which I am very grateful. But I think it must be admitted and understood that the President ended this war only after being pushed into that resolution, into that solution by Congress, and it was last May, a year ago, May of 1973, that I had the honor of voting to cutoff funds for the bombing in Cambodia which resolution for the first time passed the Congress as a whole and which brought about some 60 days later the final conclusion to the war in Southeast Asia.

I think I would be less than candid if I did not admit quite openly that I think the last President of my party misled the public in the same way. I think the publication of the Pentagon Papers indicated quite clearly that President Johnson misled the people, that in the campaign of 1964 at a time when he was making speeches in one direction and representations in one direction, he was in fact preparing to go another, and that the Tonkin Gulf resolution, supposedly his authority for fighting that war, was attained at the cost of misleading Congress, purposely misleading Congress.

How many impeachment resolutions, it has been asked quite recently in this debate, how many impeachment resolutions were introduced to impeach President Johnson, and I suppose the answer is none, but because none were brought against President Johnson and because he was not brought to account for his misleading of Congress and the public, that cannot excuse this President.

I am amazed, to use the terminology of the gentleman of New Jersey, that that argument can surface, that the sins or the impeachable offenses, if they are, of one President can justify those same sins of another President.

This President indisputably ordered secrecy in the reporting and the nonreporting and falsification of documents of this war after having ordered the war perpetrated.

I have at my side 11 separate statements which President Nixon and his military advisers and commanders made to Congress, 9 to Congress and 2 to the public. Lies all. In absolute derogation of the President's obligation to Congress to provide them with adequate information, adequate and true information upon which they might fulfill their responsibility of whether we go to war or not.

Committee members know that I, among others, keep harping that we must find some lessons for the future out of this impeachment proceeding. I hope that we will set down a standard for Presidents and future wars, that something positive will come out of this sad—the history of this sad war in Southeast Asia and the history of this sad proceeding, that put together, we will say that if there are to be future wars, and I hope, as I know all members of the committee do with all

our hearts that there will not be, that those wars will only be decided by the people through their Representatives in Congress just like the Constitution requires.

Mr. Chairman, I yield back the balance of my time.

Mr. SARBANES. Mr. Chairman?

The CHAIRMAN. The gentleman has yielded back his time?

Mr. OWENS. Does the gentleman from Maryland desire that I yield?

The CHAIRMAN. The gentleman has 1½ minutes remaining.

Mr. OWENS. I yield to my colleague.

Mr. SARBANES. Mr. Chairman, could I make a parliamentary inquiry?

The CHAIRMAN. The gentleman will state it.

Mr. SARBANES. Is there some way a member who, when we came here, was not prepared to declare himself at that time as either a proponent or opponent and thought he ought to listen to this debate, can get some time to speak? As I recall, the time was parceled out on that basis and thus requires that the member, prior to listening to this debate, indicate and seek his time. I would like to ask unanimous consent that I be allowed 5 minutes which would be in between what was allocated to proponents and opponents.

Mr. RANGEL. Reserving the right to object——

Mr. SARBANES. I will take the lesser time, 3½ minutes.

Mr. LATTA. Mr. Chairman?

The CHAIRMAN. Mr. Latta.

Mr. LATTA. Reserving the right to object, and I shall not object, I just take the time, however, to point out that earlier, even though I had my hand up on another matter, the Chair failed to write my name down and denied me my 4 minutes and 35 seconds, or something like that, and the Chair was very charitable and he gave me 1 minute, but I shall be much more charitable and I shall not object and you shall have all of your time.

Mr. SARBANES. Thank you, Mr. Chairman.

Mr. RANGEL. I reserve the right to object. I would just like to inquire as to whenever my distinguished colleague makes up his mind as to what side he is going to speak on this issue as to what order his name will be listed as being recognized.

The CHAIRMAN. There is no—no time is left. The gentleman has—the gentleman from Utah had been the last speaker in support, and actually all time had expired.

Mr. RANGEL. I hate to find myself in the position as my distinguished colleague, Mr. Latta, but having heard the distinguished chairman mention my name as one that had been on the list, I was hoping that you had not forgotten.

The CHAIRMAN. The Chair wishes to state that the names of all of those who had been seeking recognition were all read.

Mr. RANGEL. I am certain, Mr. Chairman, that if the stenographer were to review the notes that she has taken, that my name would be recorded among those that wanted to speak. In any event, I would request unanimous consent to speak briefly on this subject.

Mr. HUNGATE. Would the gentleman from Ohio perhaps yield his 4 minutes and 35 seconds?

Mr. KASTENMEIER. Mr. Chairman, reserving the right to object, and I do so because we may have open-ended this thing, if I understand it, Mr. Sarbanes is seeking——

Mr. SARBANES. Mr. Chairman, I withdraw the request.

Mr. RANGEL. Mr. Chairman, you had mentioned my name as being on the list.

The CHAIRMAN. Well, the Chair wishes to state that the list was submitted to the Chair of those people and——

Mr. BROOKS. Mr. Chairman?

The CHAIRMAN. Is there objection?

Mr. LATTI. Mr. Chairman?

Mr. BROOKS. Mr. Chairman, I ask unanimous consent that Mr. Sarbanes and Mr. Rangel both be given 3 minutes, and let's then vote on this and not argue about whether or not their names were down. They both want to speak. I would be delighted to hear them. It won't take much longer, and we can then go on and vote. We will spend more time arguing about it. Then let them speak.

Mr. FROELICH. Mr. Chairman, reserving the right to object——

Mr. SMITH. I request that Mr. Rangel be allowed to have up to 4 minutes, or whatever the time is.

Mr. FROELICH. Mr. Chairman? Mr. Chairman, reserving the right to object.

The CHAIRMAN. Mr. Froehlich.

Mr. FROELICH. I know this time my colleagues, Mr. Maraziti and Mr. Moorhead would also like to speak, and if we are going to give that right to the two gentlemen over there, I ask unanimous consent that they be included for the same amount of time.

The CHAIRMAN. Well, the Chair would like to state that the Chair erred in not recognizing the gentleman from New York, and the Chair does want to state that he did know that prior to the recognition of those members that the member from New York, Mr. Rangel, had indicated that he would be one of those who wanted to speak on the article if it were proposed. And I do have his name, but I did not have his name at the time, and I would wish maybe that the members might recognize that he could do that, and out of consideration for that fact, the Chair will state that it erred and that the Chair asks unanimous consent that the gentleman from New York be given that 4 minutes.

Mr. HUTCHINSON. Mr. Chairman, reserving the right to object, I will simply suggest that under a similar circumstance under another article, Mr. Latta was granted 1 minute, so I think if Mr. Rangel is granted 1 minute that ought to take care of it in the same way.

Mr. RANGEL. I don't think——

The CHAIRMAN. Maybe we will not wrangle over the 1 minute.

Mr. RANGEL. Thank you.

The CHAIRMAN. Without objection, it is so ordered.

Mr. RANGEL. And I thank my very generous colleagues on this committee.

And I was not a Member of Congress when Franklin Roosevelt, Mr. Truman and Mr. Kennedy and Mr. Johnson were here, and they are not here now to set the record straight. All I am saying is that Americans do not ask too much from their country, and when there

is a problem, when our Nation's safety is at stake, military people go forward, American men go forward and they defend our country.

The only thing between war and people is the United States Congress. I refuse to believe that you have got to change the rules of the game and say that this President, or any other President, can meet with a handful of Congressmen and thereby send American boys to fight a war in some country that they did not even know existed. Perhaps there was no argument made against Mr. Truman, but on that troop ship that I was on in June of 1949, had the argument been raised on the question of impeachment, I am certain there would have been a lot of support for it.

I yield back the balance of my time.

The CHAIRMAN. The time has expired. All time has expired, and the question now occurs on the article as offered by the gentleman from Michigan.

All those in favor of the articles, please signify by saying aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[Chorus of "noes."]

The CHAIRMAN. The noes appear to have it.

Mr. LATTA. Rollcall, Mr. Chairman.

Mr. CONYERS. Rollcall.

The CHAIRMAN. A call of the roll is demanded and a call of the roll is ordered, and the clerk will call the roll. All those in favor, please signify by saying aye when their names are called, and all those opposed no. And the clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.

The CLERK. Mr. Brooks.

Mr. BROOKS. Aye.

The CLERK. Mr. Kastenmeier.

Mr. KASTENMEIER. Aye.

The CLERK. Mr. Edwards.

Mr. EDWARDS. Aye.

The CLERK. Mr. Hungate.

Mr. HUNGATE. Aye.

The CLERK. Mr. Conyers.

Mr. CONYERS. Aye.

The CLERK. Mr. Eilberg.

Mr. EILBERG. No.

The CLERK. Mr. Waldie.

Mr. WALDIE. Aye.

The CLERK. Mr. Flowers.

Mr. FLOWERS. No.

The CLERK. Mr. Mann.

Mr. MANN. No.

The CLERK. Mr. Sarbanes.

Mr. SARBANES. No.

The CLERK. Mr. Seiberling.

Mr. SEIBERLING. No.

The CLERK. Mr. Danielson.

Mr. DANIELSON. No.  
 The CLERK. Mr. Drinan.  
 Mr. DRINAN. Aye.  
 The CLERK. Mr. Rangel.  
 Mr. RANGEL. Aye.  
 The CLERK. Ms. Jordan.  
 Ms. JORDAN. Aye.  
 The CLERK. Mr. Thornton.  
 Mr. THORNTON. No.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. Aye.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. Aye.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. Aye.  
 The CLERK. Mr. Hutchinson.  
 Mr. HUTCHINSON. No.  
 The CLERK. Mr. McClory.  
 Mr. McCLORY. No.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. No.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. No.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. No.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. No.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. No.  
 The CLERK. Mr. Fish.  
 Mr. FISH. No.  
 The CLERK. Mr. Mayne.  
 Mr. MAYNE. No.  
 The CLERK. Mr. Hogan.  
 Mr. HOGAN. No.  
 The CLERK. Mr. Butler.  
 Mr. BUTLER. No.  
 The CLERK. Mr. Cohen.  
 Mr. COHEN. No.  
 The CLERK. Mr. Lott.  
 Mr. LOTT. No.  
 The CLERK. Mr. Froehlich.  
 Mr. FROEHLICH. No.  
 The CLERK. Mr. Moorhead.  
 Mr. MOORHEAD. No.  
 The CLERK. Mr. Maraziti.  
 Mr. MARAZITI. No.  
 The CLERK. Mr. Latta.  
 Mr. LATTI. No.  
 The CLERK. Mr. Rodino.  
 The CHAIRMAN. No.  
 The CLERK. Mr. Chairman?  
 The CHAIRMAN. The clerk will report.

The CLERK. Twelve members have voted aye, 26 members have voted no.

The CHAIRMAN. And the article is not agreed to.

The committee will be recessed until 8 o'clock this evening.

[Whereupon, at 6:25 p.m., the committee was recessed, to reconvene at 8 p.m. this same day.]

#### EVENING SESSION

The CHAIRMAN. The committee will come to order.

I recognize the gentleman from Iowa, Mr. Mezvinsky.

Mr. MEZVINSKY. Thank you, Mr. Chairman.

I have an article at the desk.

The CHAIRMAN. The clerk will read the article.

The CLERK [reading]:

Immediately after article III of the additional article IV.

In his conduct of the Office of President of the United States, Richard M. Nixon, in violation of his constitutional oath faithfully to execute the Office of the President of the United States, and, to the best of his ability, preserve, protect and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, did receive emoluments from the United States in excess of the compensation provided by law pursuant to article II, section 1 of the Constitution, and did willfully attempt to evade the payment of a portion of Federal income taxes due and owing by him for the years 1969, 1970, 1971, and 1972, in that:

(1) He, during the period for which he has been elected President, unlawfully received compensation in the form of Government expenditures at and on his privately owned properties located in or near San Clemente, Calif., and Key Biscayne, Fla.

(2) He knowingly failed to report certain income and claimed deductions in the years 1969, 1970, 1971, and 1972 on his Federal income tax returns which were not authorized by law, including deductions for a gift of papers to the United States valued at approximately \$576,000.

Mr. MEZVINSKY. Mr. Chairman, I ask unanimous consent that all debate on this article, including the consideration of any amendments thereto, be limited.

The CHAIRMAN. If the gentleman would defer, the clerk has not read. Or otherwise the gentleman can ask unanimous consent that further reading be dispensed with.

The Clerk will proceed to read the article.

The CLERK [reading]:

In all of this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice and to the manifest injury of the people of the United States.

Wherefore Richard M. Nixon, by such conduct, warrants impeachment and trial, and removal from office.

The CHAIRMAN. The gentleman from Iowa.

Mr. MEZVINSKY. Thank you, Mr. Chairman.

I ask unanimous consent that all debate on this article including the consideration of any amendments thereto, be limited to a period not to exceed 2 hours to be divided equally to proponents and opponents of the article, and debate on any amendment shall not exceed 20 minutes, divided equally between proponents and opponents of the amendment.

Mr. LATTA. Mr. Chairman, reserving the right to object.

The CHAIRMAN. Mr. Latta.

Mr. LATTA. I note that we are 35 minutes late in getting started, and I wonder if the gentleman would consider reducing his time to 1½ hours.

Mr. McCLOREY. Mr. Chairman, further reserving the right to object. Mr. Chairman, further reserving the right to object I would like to make this inquiry. You made reference to the fact of 20 minutes on amendments, but the 2-hour limitation that you suggested would include the 20 minutes, would include all amendments and all debate on the original article on all amendments?

Mr. MEZVINSKY. That is correct. And I would hope with all respect to the gentleman from Ohio that, although we set it not to exceed 2 hours, but I would expect that it very well could be less than 2 hours.

But, the feeling was we should at least have an airing of the issue, and it very well could take less than 2 hours, but it cannot exceed 2 hours, and that would also include any amendments thereto.

Mr. LATTA. Further reserving the right to object.

The CHAIRMAN. Mr. Latta.

Mr. LATTA. Mr. Chairman, in view of the past experiences when we have set the time, it seems inevitably that we use all of the time, and believing that we probably can cover this adequately in 1½ hours I would hope that the gentleman would request that we not exceed that period.

The CHAIRMAN. The gentleman from Iowa.

Mr. BROOKS. Reserving the right to object.

Mr. MEZVINSKY. I will be glad to yield to the gentleman from Texas.

Mr. BROOKS. My distinguished friend from Iowa, Mr. Mezvinsky, I would hope that we could retain the 2-hour limitation and that would give only 1 hour for the explanation and discussion on a very involved article which involves the President's taxes as well as emoluments under the Constitution.

I would hope that we do it with that, and with the amendments, do it promptly within that 2-hour period. I think it is not an excessive amount and I would hope that the gentleman would withdraw his objection, as I certainly do my own.

Mr. LATTA. Can we compromise on 1 hour and 45 minutes?

The CHAIRMAN. The gentleman from Maryland, Mr. Sarbanes.

Mr. SARBANES. I have a parliamentary inquiry, Mr. Chairman. If there is an objection, do we then revert to the rules governing our procedures which would give each member of the committee 5 minutes to speak in general debate and also 5 minutes to speak on every amendment?

The CHAIRMAN. The gentleman is correct.

Mr. SARBANES. Well, it seems to me the proposal put forth by the gentleman from Iowa is quite a reasonable one under the circumstances.

Mr. LATTA. If there is no compromise, and I am a man of compromise, but if there is no compromise we will take the 2 hours. I withdraw my objection.

The CHAIRMAN. There being no objection, the unanimous consent request is ordered.



Mr. MEZVINSKY. Mr. Chairman, I ask unanimous consent that I have the first 10 minutes of the 2 hours.

The CHAIRMAN. Without objection.

Mr. MEZVINSKY. Thank you, Mr. Chairman.

The CHAIRMAN. This will come out of the gentleman's time.

Mr. MEZVINSKY. Right. Thank you.

Mr. WIGGINS. Mr. Chairman?

The CHAIRMAN. Mr. Wiggins.

Mr. WIGGINS. I have an amendment at the desk.

The CHAIRMAN. The clerk will read the amendment.

The CLERK [reading]:

Amendment by Mr. Wiggins.

On page 1 in subparagraph 2 add the words "and fraudulently" after the word "knowingly."

The CHAIRMAN. The gentleman is recognized.

Mr. WIGGINS. Mr. Chairman, I shall only take a few moments with respect to this amendment, and if perhaps there can be some agreement between myself and the author of the article so as to make extended debate on this question unnecessary. The reason that the language "and fraudulently" is added to the second subparagraph is because there is an ambiguity on the face of the article between the introductory language, "willfully attempt to evade," which tracks the language of title 26, section 7201, and the language of subparagraph 2 which does not interject the element of fraud in its text.

It is my belief that the gentleman from Iowa intends this to be a fraud case, and that there is no intentional omission on his part with respect to subparagraph 2 to remove elements of fraud as the proper thrust of the case, and if that is in fact his intention, then I see no reason for me to pursue my amendment, since we are in agreement, and I will be happy to yield to the gentleman from Iowa so that he can state his intention.

Mr. MEZVINSKY. Thank you. I accept the amendment from the gentleman from California.

Mr. WIGGINS. I appreciate that. And, Mr. Chairman, that being the case, and believing that the members of the committee will similarly accept the amendment, I think that it now narrows the focus of the debate. We will be talking about whether the President has committed fraud in the preparation and execution of his tax returns, and all debate on extraneous matters, although interesting perhaps to some, will not bear directly on the issue before us.

This committee has been complimented, over the days immediately prior to this on the high caliber of our debate, and I am confident that we will confine our debate this evening to the issues before us, especially after the adoption of the amendment which I have made.

I move the previous question on the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California.

All those in favor of the amendment please signify by saying aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[No response.]

Mr. HUNGATE. Mr. Chairman, the gentleman I thought cited a statute and I was interested in the title and the citation if I might before I vote.

Mr. WIGGINS. Surely. Title 26, section 7201, which is the fraud section.

Mr. HUNGATE. I thank the gentleman.

The CHAIRMAN. The Chair will state that the question had already been before the committee. The question is on the amendment offered by the gentleman from California.

All those in favor of the amendment please signify by saying aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed?

[No response.]

The CHAIRMAN. The ayes have it and the amendment is agreed to.

The gentleman from Iowa.

Mr. MEZVINSKY. Thank you, Mr. Chairman.

I know that we are all tired, and I know that all of us who have wrestled with the votes we have cast are awaiting the relief which is promised when you, Mr. Chairman, bring down the gavel to end this unwelcome task.

But, I believe that the kind of conscientiousness which so thoroughly marked our deliberations would be jeopardized if we failed to give serious consideration to the President's failure to pay his proper income taxes and his misuse of tax dollars.

Now, I respect my colleagues' reasons for not including this in the other articles. But I feel so strongly on this issue that I must introduce this article so that full consideration can be given to the overwhelming evidence on the matter of the Presidential wrongdoing.

Now, my special concern will be the area of the taxes which I believe constitutes criminal wrongdoing and an abuse of power. And the other part of that article is equally important, and the evidence that the President violated the emoluments clause of the Constitution which is equally distressing. As we proceed with the debate, I will yield to the distinguished gentleman from Texas, Mr. Brooks, who will thoroughly discuss this issue. He can give the kind of lucid view that is so very vital because he is chairman of the Government Operations Activities Subcommittee that handled the matter of the Presidential east and west coast estates, both San Clemente and Key Biscayne.

Now, really what I want to discuss is the question of whether or not Richard Nixon willfully evaded the portions of his Federal income tax in the years 1969 through 1972. In addition to the work that has been done by the committee, I have talked with the staff of the Joint Committee on Internal Revenue Taxation which reviewed the President's taxes and I am thoroughly convinced that the evidence justifies, indeed it really demands, an article of impeachment calling the President into account for his actions on the matter of his taxes.

Now, if you remember in my opening remarks last Thursday night I went down the litany of President Nixon's taxes, citing the great discrepancies between what he owed and how much he paid. We remember 1970 when he had an income of about \$350,000. He only paid \$793 of the more than \$90,000 that was owed.

You recall that in his first 4 years as President he underpaid his Federal income taxes by nearly \$420,000. This was because he claimed

over \$565,000 in improper deductions and he failed to report over \$230,000 in taxable income.

So what do we see? We see a total error on his tax returns in excess of three-quarters of a million dollars.

That is right. Three-quarters of a million dollars.

Now, some might possibly argue and say that this was an honest mistake but unfortunately the facts really don't support that conclusion. Instead, they point toward the President's deliberate failure to pay his proper tax. And really what is the central element of Mr. Nixon's assault on our tax laws? It is that unlawful deduction taken for a gift of his personal papers. As I said last Thursday night, the reason that that one-half million dollar deduction was improper was that the loophole that he tried to use, that allowed such deduction was closed July 25, 1969. Now the President claimed on his tax returns that, actually the gift was made prior to that time.

But what do we find? We find that in the spring of 1969 the papers which actually made up that gift hadn't yet even been selected and appraised and the man who supposedly selected them and appraised them didn't even view them until months after the cutoff date of July 25, 1969.

And in the spring of 1969, the recipient of the gift, the National Archives, had no idea that the gift had even been made.

Now, don't you think you would know about it immediately if somebody gave you something worth \$500,000? I submit that you would.

And really, the only thing that lends credence whatsoever to the claim that a gift was made prior to the July 1969 change in the law was the fact that the deed on its face said that it was executed in the spring of 1969. But what do we find as a fact? The fact is the IRS ruled that the deed was actually signed in 1970 and was falsely back-dated.

Now, I know that the White House has argued and some of my colleagues might contend that this pattern of deception which resulted in a personal enrichment of the President was really manufactured by his aides and without his personal knowledge. But we know that Mr. Nixon takes an active interest in his personal financial affairs. We know that he was involved in very detailed fashion and personally executed a deed for a much smaller gift of papers he made in 1968. We know that he went over his 1969 tax return page by page and attested to its accuracy before signing on the bottom line, under penalty of perjury.

We know that he personally discussed the tax benefits of this one-half-million-dollar gift with his lawyer.

And we know that Mr. Nixon knew that he never signed a deed for the gift.

So really what is the question for this committee? We have to consider whether we can believe that President Nixon, who has told us that he has practiced a lot of tax law, did not know the truth about a gift of over one-half million dollars, the largest gift he has ever given in his life.

I think we are all aware that some have argued, and this is a key point in our debate, that a President can be impeached only for criminal conduct, and then there are others who contend that this tax

matter, although involving criminal conduct, is not an impeachable offense because it involves "unofficial conduct."

Now, I think we should take a look at the President's conduct and see whether or not it is impeachable. All of us on the committee know that if one of us took an unlawful deduction for a half million dollars on our tax returns, we would be subject to criminal prosecution. The President's signing of his tax returns may not be an official act but it is likely that if it weren't for his official capacity, he, too, would be prosecuted for willful tax evasion.

But unfortunately, due to his special position, really only the impeachment process can call the President into account for his actions.

We must also confront this evidence as an extension of the abuse of IRS. Last night we heard members—Walter Flowers, Alabama; Tom Railsback, from Illinois—speak so eloquently about the abuse of IRS and how it corrodes the system.

Well, let me say that I think this falls in that category because we have a President who, due to his position, could assume that his tax returns were not subject to the same scrutiny as those of other taxpayers. Rather than taking care to insure that his tax returns complied with the laws, he took advantage of the Presidency to avoid paying his proper tax.

And really what is more significant, and this to me is the key, is that this poses a serious threat to our tax system which operates on the premise that everyone is expected to be honest. The reason it works so well is that we expect the laws to be equally applied to every taxpayer, whether he is a resident of Iowa or Alabama, Massachusetts, New Jersey, Arkansas or whether he resides in the White House.

And when the President of these United States refuses to be bound by the revenue laws and if he escapes the judgment here as he evaded his taxes, then it is not just the treasury that is poorer. The very integrity of our system of self-government is diminished.

The CHAIRMAN. The gentleman has consumed 10 minutes.

Mr. MEZVINSKY. I yield to—does the other side care to take up some time?

Mr. HUTCHINSON. I will claim the time on this side.

The CHAIRMAN. Mr. Hutchinson.

Mr. HUTCHINSON. I will claim the time on this side, and I will yield 5 minutes to Mr. Wiggins.

The CHAIRMAN. Mr. Wiggins is recognized for 5 minutes.

Mr. WIGGINS. I thank the Chairman for yielding.

Ladies and gentlemen, we reached an agreement a few moments ago that what this case was all about was the willful evasion of taxes. We know, although the gentleman from Iowa causes me to doubt that he knows that this case has nothing to do with an innocent state. If the President, in fact, erred on his income tax but did so innocently or relied in good faith upon his counsel, then we are not talking about tax fraud in this case. It is a sweeping inaccurate statement to say that any citizen who claimed an improper deduction in this amount would be criminally prosecuted. That is not so. Such a prosecution can only proceed if there is fraud.

And I want to discuss the evidence, not a theory, not a theory at all, but the evidence with respect to whether or not fraud exists in this case.

This story began in the fall of 1968, ladies and gentlemen, after the election, when President-elect Nixon met with President Johnson. President Johnson recommended to President Nixon that he might consider giving as a gift and taking a tax deduction certain pre-Presidential papers. President Johnson recommended to President-elect Nixon the name of an appraiser, one that Mr. Johnson had used when he claimed his deduction. The appraiser's name was Newman and he was from Chicago.

President Nixon apparently felt that was worthy of pursuing and contacted his law partners up in New York, the firm of Nixon, Mudge, Rose, and an attorney proceeded thereafter to perfect a gift of certain pre-Presidential papers for the taxable year 1968.

Now, that was the only Presidential involvement in the year 1968, President-elect Nixon, talking to President Johnson and dealing through his attorneys concerning a gift.

We move now into the year 1969, which is the critical year insofar as Presidential actions are concerned.

In February of that year, John Ehrlichman sent a memorandum to the President in which he discussed tax planning for the President and suggested that the President might well consider making a gift of his pre-Presidential papers. There was no question at that time as to the propriety and lawfulness of making such a gift if it were properly perfected. The only Presidential act so far as our records disclose is the President writing on the bottom of that memorandum the word "good," and a few odd sentences with respect to a foundation. But the word "good" is the operative word, suggesting that the President was instructing Ehrlichman to go forward and perfect the gift of his pre-Presidential papers.

The President now is removed from the picture for a period of many months. Thereafter, John Ehrlichman and Ed Morgan of the White House, in cooperation with Mr. DeMarco, a tax attorney out in the Los Angeles area, performed certain acts for the purpose of claiming a gift.

I make no claim, ladies and gentlemen, that they acted properly. That will be determined at a later time. But we are talking about the President's actions and his alleged fraud. The President played no role, ladies and gentlemen, in that at all.

The next act of the President is in a social occasion at the White House when he meets Mr. Newman and as Mr. Newman goes down the social greeting line, and we have all had some experience in that, there was a brief exchange about the appraisal, appraisal of the pre-Presidential papers.

Thereafter, the next act occurs in January, rather, in December. The President signs a bill, a tax reform bill. And the final act upon which this whole case is premised is that in April, April 10, 1970, Mr. DeMarco and Mr. Kalmbach, his two attorneys, come to the Oval Office with a completed tax return. They spend approximately 35 minutes in the Oval Office, a portion of which was devoted to pleasantries, approximately 10 minutes of which was devoted to the tax return itself. It is stated by the witnesses that they went over it page by page and now critically, ladies and gentlemen, critically the evidence is that the President's attorneys then and there stated to him that these deductions were properly taken and the President signed the return.

A few moments thereafter, Mr. DeMarco took the return upstairs for Mrs. Nixon to sign and that is it. That is all the evidence we are talking about.

Now, on that—on that this web of fraud is spun and I suggest to you, ladies and gentlemen, it is wholly, wholly unsupported in the evidence.

The CHAIRMAN. The 5 minutes of the gentleman has expired. Mr. Hutchinson.

Mr. HUTCHINSON. I yield 5 minutes to the gentleman from Illinois, Mr. Railsback.

The CHAIRMAN. Mr. Railsback is recognized for 5 minutes.

Mr. RAILSBACK. Mr. Chairman and members of the committee, let me associate myself with the remarks of the gentleman from California who I think has really accurately stated the facts. I just want to elaborate a little bit more on the facts as I know them to be.

Let me say that I also don't question the sincerity of the gentleman from Iowa in—I know of his concern about this particular area, but personally I can't help but think this is another case where we have "impeachmentitis" which along with some of the other things that we voted on earlier today, in an overkill.

The second affirmative act that was claimed in the alleged presidential misconduct is the President's signature of his tax return which was done on April 10. And I just want to elaborate a bit on what Mr. DeMarco testified to as well as Mr. Kalmbach.

DeMarco, the President's tax counsel, explained in his interview with our inquiry staff the explanation to the President consisted of DeMarco pointed to the appraisal of the papers and stating, and I quote: "This is an appraisal supporting the deduction for the papers which you gave away." And according to DeMarco, the President's response was: "That is fine."

DeMarco said there was no discussion about the deed giving the gift of papers to the United States.

Moreover, DeMarco has stated that there was no in-depth analysis of the tax return while he was with the President. I remember seeing an interview of DeMarco after some of this came to light where DeMarco indicated that he still felt that everything was proper.

Then in addition to that, what has the President done when some of it came to light? He agreed to turn it over to the Joint Committee of Congress given authority to make a determination concerning his 1969, 1970, 1971, and 1972 returns. The committee made its determination, which resulted in a finding of tax responsibility in the amount of something over \$432,000, plus interest, and it is my understanding that the President agreed to pay it, although there is some discussion about the 1969 liability. If he does pay that, which goes back before the statute of limitations, he will be able to take that as a deduction.

My feeling is the President, who has been impeached by this committee for two serious, grave acts and who has been assessed an income tax liability of \$432,000 plus interest, I really think, I think the committee has gone far enough, and I suggest that there is a serious question as to whether something involving his personal tax liability has anything to do with his conduct of the office of the President. And

I suggest that we rest with the three articles that have been adopted against him, and maybe let him have a little relief.

The CHAIRMAN. The gentleman has 30 seconds out of his 5 minutes left.

Mr. HUTCHINSON. I yield to Mr. Mezvinsky.

The CHAIRMAN. The gentleman from Iowa is recognized.

Mr. MEZVINSKY. I yield 10 minutes to the distinguished gentleman from Texas, Mr. Brooks.

Mr. BROOKS. Thank you, Mr. Mezvinsky.

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. Mr. Chairman.

No man in America can be above the law. It is our duty to establish now that evidence of specific statutory crimes and constitutional violations by the President of the United States will subject all Presidents now and in the future to impeachment.

With respect to the President's taxes, I submit to the committee that when Mr. Nixon personally signed his income tax returns, he attested to false information with the purpose of defrauding the American people of approximately one-half million dollars. It has been documented that President Nixon took unlawful deductions from his income during the years 1969, 1970, 1971 and 1972. These include a fraudulent gift of his Vice Presidential papers, his daughter's honeymoon at Camp David, and the upkeep and maintenance of his private homes at Key Biscayne and San Clemente.

In addition to reducing his taxes by these fraudulent deductions, Mr. Nixon failed to report certain income from the sale of property in California, in New York, and in Florida and from the conversion of campaign contributions to his own personal use.

We are not discussing a person unfamiliar with the laws involved. This is a lawyer who knows the requirements for a gift. This is a man who signed the tax provision in question into law a few months earlier. This is the man who unabashedly attempted to use the IRS to attack his political enemies.

Now, with regard to emoluments, I want to direct your attention to article II, section 1 of the Constitution which states, and has stated, since about 1789, that:

The President shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive any other emolument from the United States or any of them.

Alexander Hamilton, writing in the Federalist Papers, stated its purpose as follows:

Neither the union nor any of its members will be at liberty to give, nor will he be at liberty to receive any other emolument than that which may have been determined by the first act.

Now, you are familiar with the expenditures of Federal funds on President Nixon's vacation retreats in San Clemente, Calif. and Key Biscayne, Fla. This issue has been the subject of several extensive investigations by congressional committees and executive agencies.

The Internal Revenue Service did an audit of President Nixon's tax returns and they determined that he received \$94,679.61 in unreported income as a result of Government expenditures on his Cali-

fornia and Florida homes and travel for unauthorized purchases. The breakdown was about \$67,000 on those homes, about \$27,000 on unauthorized travel, which was unreported income to him.

The Internal Revenue Service declared, and I quote, and this is not Democrats, this is not Republicans, this is the U.S. Internal Revenue Service, they said:

In view of the taxpayer's relationship to the U.S. Government as its chief executive officer, the above items constitute additional compensation to him for the performance of his services for the Government.

Now, these expenditures were not the result of overzealousness on the part of fawning bureaucrats, but were ordered by his personal agents, his personal lawyer, his personal architect, his personal decorators, his closest personal friend. In my judgment, the President should be impeached by the House of Representatives for his gross and willful violation of article II, section 1 of the U.S. Constitution, the highest law in this land.

And I would reserve the balance of my time for a future period.

The CHAIRMAN. The gentleman cannot—

Mr. BROOKS. Pardon me, if that is not proper, what time have I consumed?

The CHAIRMAN. The gentleman has 4 minutes and 45 seconds remaining.

Mr. HUNGATE. Would you yield to me?

Mr. BROOKS. I will be delighted to just point out that there has been some question about what the Government has done about this, about whether it is fraud or whether it is a problem or not. And I will point out that Donald Alexander, the current Commissioner of Internal Revenue Service, and I do not even know him, referred to the question of possible—I hope I don't meet him—referred to the question of possible violations of section 7206 of the Internal Revenue Code rising out of the preparation of that 1969 income tax. He sent a letter to Mr. Leon Jaworski asking that they look into this, and this is what he said in that letter. He did not send it a long time ago. He sent it on April 2, 1974 not last year, just a month or so ago. And he said:

We have been unable to complete processing of this matter in view of lack of cooperation of some of the witnesses and because of the many inconsistencies in the testimony of individuals presented to the Service. The use of grand jury process should aid in determining all of the facts in this matter. It is our opinion that a grand jury investigation will involve Presidential appointees. We believe it would be appropriate for it to be carried forth by your office.

Now, since that time I understand that the grand jury has called Arthur Blech, his accountant on two occasions, once on June 26 or 27, and again on July 25, and that is this year, and that he has been discussing with them the details of these tax preparations. In addition to that, I understand that they probably have or very shortly will have issued subpoenas for some of the financial records so that we can get at the bottom of this.

Now, there are additional income figures of unreported income that I hope Ms. Holtzman will discuss. She is very familiar with them, and I would at this point, if I have any time, yield to my distinguished friend, Mr. Hungate.

Mr. HUNGATE. I thank the gentleman for yielding.



And all I know about this is what I read in the papers. On January 21, 1974, I placed in the record a statement that:

Much controversy has arisen over President Nixon's tax write-off on his official papers, and his assertion that the late President Lyndon Johnson gave him the idea. I think my colleagues will be interested in this editorial from the Houston Post regarding President Johnson's papers: "In view of President Nixon's reference to the late President Lyndon B. Johnson as having given him the idea for taking a tax write-off on official papers, it is interesting to notice President Johnson's own record. LBJ is thought to have taken a tax deduction for \$200,000 out of a total of 31 million papers. They dealt with his life up to the time he entered the Senate.

Ralph Newman, Chairman of the Chicago Public Library, who has worked for every President since Herbert Hoover, appraised the LBJ papers as he later did the Nixon papers. He set a value of \$20 to \$40 million on the LBJ papers.

But President Johnson bequeathed all the papers of his Senate years, his Vice Presidency and his Presidency to the LBJ Library without asking any tax advantage for his estate."

I thank the gentleman for yielding.

Mr. WIGGINS. Would the gentleman yield for a question?

Mr. BROOKS. I have a minute and one-half left, and gentleman, ladies, I would like to point out something about the President's knowledge.

The record is replete with evidence, ample evidence, that Mr. Nixon did involve himself in the renovations at Key Biscayne and San Clemente both those made at his own expense and those made at public expense. At Key Biscayne we paid \$65,000 for a fence because of the President's personal involvement in the design, not because the Secret Service required it. During hearings before the House Government Activities Subcommittee, the following discussion took place between me and the Secret Service agent, Earl Moore.

Mr. MOORE. After the initial drawing or design was presented, I think I passed along to GSA a comment from Mr. Rebozo that the First Family, the President and First Lady, would prefer something more conventional, probably something similar to the White House fence. And I think as a result, the GSA copied the White House fence.

Mr. BROOKS. Did the Secret Service request that the fence be a replica of the White House fence?

Mr. MOORE. No, sir. We only wanted to get a fence up there.

Now, in testimony before this committee, Mr. Butterfield was asked to what extent the President gave attention to detail. He responded that Mr. Nixon was very interested in the grounds at Key Biscayne, Camp David, San Clemente, the house, the cottage, and the grounds.

The CHAIRMAN. The gentleman has consumed 10 minutes.

Mr. WIGGINS. Parliamentary inquiry, Mr. Chairman.

In the discussion, are we going to be confined to evidentiary materials before the committee, or are the members free to call upon other materials known to them only?

The CHAIRMAN. Well, the gentleman is advised that during this time of debate members are to discuss the matters before them, which is the matter of possible impeachable offenses as it relates to the article before them.

Mr. BROOKS. Mr. Chairman, if I could, would the gentleman yield for clarification?

Mr. WIGGINS. Sure.

Mr. BROOKS. The source of this information was furnished to the committee and is a part of the committee records and was made available to Mr. Jenner and Mr. Doar and to the committee if they wanted to read them.

Mr. WIGGINS. Well, I appreciate that.

Mr. MEZVINSKY. Mr. Chairman?

Mr. WIGGINS. I think we are going to have some more new information shortly.

Mr. MEZVINSKY. I am going to take 1 minute to make a comment concerning the matter of fraud.

I think it has to be shown and brought to the attention of this committee that we heard an expert witness who had been the head of the Criminal Tax Fraud Division of the Department of Justice. He was responsible for drafting the manual on the matter of fraud. He told us that considering the facts that we have had presented to us, including the taxpayer's failure to answer the questions submitted to him by the Joint Committee on Internal Revenue Taxation, he said, and I quote:

If no satisfactory response was forthcoming, it would be my judgment that in the case of an ordinary taxpayer, on the facts as we know them in this instance, the case would be referred out for presentation to a Grand Jury for prosecution.

Mr. WIGGINS. Will the gentleman yield?

Mr. MEZVINSKY. And I will yield now to Mr. Danielson for 5 minutes.

The CHAIRMAN. The gentleman from Iowa is advised that he has now consumed 21 minutes of the 60 minutes and there are 39 minutes remaining, and the gentleman from Michigan has consumed 12 minutes and there are 48 minutes remaining.

The gentleman from Iowa.

Mr. MEZVINSKY. I now yield to the gentleman from California, Mr. Danielson, for 5 minutes.

The CHAIRMAN. The gentleman from California.

Mr. DANIELSON. The first little comment I would like to make, I wish to make one thing clear in the record. Three of our members have stated at one time or another in these proceedings that the President cannot be indicted for a criminal offense while he is in office. I want to point out that in my opinion that is an incorrect statement of the law. It is a wholly gratuitous comment, and I do not agree with it, and I feel that the record should reflect it is not the opinion of the committee officially.

The amendment which has just offered and accepted, offered by Mr. Wiggins, accepted by Mr. Mezvinsky, and adopted by the committee to add the word "fraudulently" into the operative portion of this article, I want to point out that was not just a fine semantic difference.

This is a very carefully calculated, very intentional amendment because by adding the term "fraudulently" after "knowingly" we have lifted the degree of the offense which could be charged by this article against the President from that of a civil matter to one at least in the context of criminal tax fraud which requires a very high burden, a very high degree of proof, a willfulness, knowingly, intentionally, for perverse purpose or whatnot.

But it remained put on there for a good reason. I feel that if we are going to impeach a President for tax fraud, it probably should be a fraud of the highest degree.

But at least let's not assume that it slipped our mind that fraudulently is not a very significant word in this article.

There was one other very interesting point. Since this is not a criminal proceeding and if the House should impeach and the Senate should try on the ground of tax fraud and not find a conviction, since it is not a criminal proceeding it would not be jeopardy barring a subsequent prosecution.

When we consider this particular article, I want all of the members please to bear in mind Mr. Chairman that we do not consider matters of this type in a vacuum.

When we consider the burden of proof in a tax fraud case or in any other case of this type, we must consider and weigh all of the evidence against the background of common sense. The conclusions and impressions we have come to in our lifetimes of experience are serious matters. People are not held to a high degree of proof that we are splitting semantic hairs. We use good judgment and common sense and we bear in mind at all times that people probably intend to do what they do in the serious matters in their life and that when we do something as serious as claiming a \$580,000 tax deduction, we are paying attention to what we are doing and are aware of the proportionate gravity of that act as above some other act that we may be involved in.

Now, this committee knows, from press reports, that the President has not denied that he owes the money which was charged against him, a rather vast sum, the exact figure I do not remember.

The press reports also indicate that he has paid the sums due for 1970, 1971 and 1972. But the record shows that he has not yet paid the sum for 1969, the principal of which was \$148,000—\$148,090.97 which would carry interest from 1969 and conceivably a negligence penalty of 5 percent which is about \$7,500.

In the evidence of fraud, one of the most common types of evidence that is produced in our criminal courts, at least, is evidence of concealment, evidence of misrepresentation, because in the orderly affairs of men, we do not conceal something unless we have something to hide. We do not misrepresent unless we do not want the truth known. So quite obviously when we conceal or misrepresent, that is some indication of intent of the actor.

What evidence do we have in this case? Not a great deal but some that is rather significant. Can you imagine, Mr. Chairman, anybody claiming a charitable deduction of \$576,000 more than one-half of his net worth, without giving some fair consideration to that claim of a deduction?

Certainly he would not do it casually. Certainly he would not do it without fully intending to claim it. And certainly he would have asked his accountant or his attorney, "Joe, do you really mean I can take \$576,000 off?"

How often, Mr. Chairman, when you write off your \$50 to St. Peter's Church have you wondered whether you had a check to cover it?

Can I state and I do state, that our President when he took these deductions in 1969 and 1970, and so forth, was not naive. He knew what he was doing. He had taken the same claim in 1968.

And in this instance the appraiser looked it over after the law had expired.

The CHAIRMAN. The time of the gentleman from California has expired.

Mr. DANIELSON. And the deed is backdated. I respectfully submit this is enough evidence to have it considered by the Senate.

The CHAIRMAN. The gentleman from Iowa.

Mr. MEZVINSKY. I will yield to the gentleman from Michigan if he—

Mr. HUTCHINSON. Yes; I will be happy to take time now. I yield 4 minutes to the gentleman from Illinois, Mr. McClory.

The CHAIRMAN. Mr. McClory is recognized for 4 minutes.

Mr. McCLORY. Thank you. I have an idea that the gentleman from California when he was inquiring about evidence which is not in our record may have been referring to LBJ's income tax returns and the practices that he had.

Now, we are not reviewing his income tax which was substantial or any of his tax practices or anything like that. We are here considering whether or not there is clear and convincing proof of tax fraud on the part of the President of the United States and we can't base that kind of a conclusion on suspicion.

Now, there hasn't been any tax fraud found by the Internal Revenue Service or the Joint Committee on Internal Revenue, both of which have investigated thoroughly the income taxes of the President, and the President has not concealed anything.

I don't know anyone who has made a cleaner breast of his income and his deductions and laid bare his Federal income tax returns for all to see. And so there isn't any mystery, there is no concealment about this at all and there hasn't been any fraud found against the preparers of the taxes even though there may be pending some investigations in that respect.

I looked over the report of the Joint Committee on Internal Revenue and went through the various tax deductions that the President had claimed, including the deferral or attempted deferral of a capital gain or a loss with respect to the purchase of residential property after he sold his apartment in New York in the Hotel Pierre and bought property out in California but that right to defer the capital gain or loss was denied. I never heard of such a thing before. And, of course, with regard to the deductions for gifts which had been taken by others, we know Hubert Humphrey and a number of others who have made gifts, many other persons, not public officials who have made gifts of valuable papers.

And it seemed to me as I reviewed this that the Internal Revenue Service and the Joint Committee on Internal Revenue have resolved all the doubts against taxpayer Richard Nixon.

Now, I don't think the President is entitled to special treatment but it seems to me he is entitled to fair treatment, and I question whether he has received it or not.

Now, we did have before us someone who formerly was with the Internal Revenue, a prosecutor. Well, certainly the prosecutor thinks

that something should go before a grand jury because it is easy for him to find things wrong and things that should be prosecuted.

But, I also have a question to ask him. I said, well I think he overpaid his taxes in some areas. Does he still have a right to go to the Tax Court or claim a rebate or refund, and of course he does.

Now, we are just talking here about the President's Federal income taxes but there is no evidence here, no clear and convincing evidence, no substantial evidence of any tax fraud and this proposed article should be summarily rejected because it doesn't belong here. Not because we feel sorry for the President or anything like that but because measuring it by the same standard that we have measured every other proposed article that has come here, there is no clear and convincing proof of any wrongdoing on the part of the President. And I yield back the balance of my time.

Mr. HUTCHINSON. How much time has the gentleman consumed?

The CHAIRMAN. The gentleman has 40 seconds remaining out of the 4 minutes which were yielded.

The gentleman from Michigan.

Mr. HUTCHINSON. I yield 5 minutes to the gentleman from New Jersey, Mr. Sandman.

Mr. SANDMAN. Mr. Chairman, I just can't imagine what else some of these people here want to do to Richard Nixon. They want to throw him out of office for some of the most vague circumstances anybody ever heard of. You heard differences of notice, of fifth amendment, due process, modern times as Richard Nixon—maybe he doesn't have the same rights as 220 million other Americans.

And then they adopted article III. That impeaches him because he won't confess. They had no evidence and if you don't give me the evidence, then we are going to impeach you. That is a new one.

And then, of course, the insult of them all, of article IV. They are going to throw him out because he ended the war by bombing Cambodia. Anybody else would get a prize but this man was going to get impeached because he ended a war that the two predecessors couldn't end.

And now that is not good enough. They want to strip him of every asset that he has got left, possibly make him go to jail for the rest of his life.

Boy, this is a generous crowd.

I just can't imagine why we can dream up all of these things.

The extra emoluments.

Do you know that one of those extra emoluments or trips that Mrs. Nixon took on Air Force One?

Did anybody ever question Jackie Kennedy or Lady Bird or anybody else?

But any least little thing that Richard does is a crime.

Let me read the one thing that apparently has been tucked under the rug. The evidence that we get is always sketchy. It is never right to the point. And, of course, he talked about an Internal Revenue agent talking about what happens in hypothetical cases. But look what happens.

Mr. Brown, chief intelligence man from the Baltimore office, March 22, 1974. That is pretty recent. He says, and quite honestly he said this because there were three people who had not been interviewed

yet, and he said that if they were given immunity in this memo, possibly, they could shed some light that would connect Nixon into some kind of fraud. But he did say this. He said, "To date, our investigation has revealed that for the following reasons we feel that we could not"—emphasize "not"—"sustain a 50-percent fraud penalty."

That is from the IRS. That is not speculation. That is what they said about this awful guilty individual. I think this is important.

Now, there are many other things that we can say, but the law is clear. The law is clear, that to be guilty of fraud it must be done intentionally. It must be done willfully. And it must be done to defraud, to do something the law doesn't allow you to do.

The law is clear. It says you cannot be held for fraud if it is a result of a mistake. You cannot be held for fraud if you rely upon the advice of an attorney. And this is what Richard Nixon did, and everybody knows it.

A fraud penalty cannot be sustained whenever the taxpayer relies upon the advice of his attorney, provided he gives his attorney all of the facts.

Now, one outstanding point. Hubert Humphrey did exactly the same thing and nobody ever said a word about Hubert taking a couple of hundred thousand dollars in a deduction. And so have some other people. There is no question that the papers were delivered to the Archives on time. There is no question about that. In the interim something else happened. This fraudulent taxpayer himself signed into law a law which changed the tax law.

Now, if he was going to be so interested in himself, wouldn't he have made some kind of a change in that? Of course he would. Or he wouldn't have signed it if he was that kind of a person. But he wasn't. He signed it into law.

There was absolutely no intent to defraud here.

Now, let me tell you one other thing which I think is awfully important, and I want to see these people who are moving this resolution deny what I am about to say. This bunch of baloney was supposed to be taken up this afternoon and not tonight, but there is a bigger audience on TV tonight than there was this afternoon.

The CHAIRMAN: The time of the gentleman has expired.

The gentleman from Michigan, Mr. Hutchinson, has 39 minutes and 40 seconds remaining.

Mr. HUTCHINSON: I yield 4 minutes to the gentleman from Mississippi, Mr. Lott.

Mr. LOTT: Mr. Chairman, after the remarks of Mr. Sandman I think it would be just as well if I pass my time back and not try to add to it. However, I want to emphasize again the remarks that he wound up with.

This afternoon, quite to the surprise of some of us, we spent the better part of the afternoon working on an article dealing with the bombing of Cambodia which we, most of us, knew would be defeated. Why? For a very good reason, so that tonight we would have an opportunity to talk about the President's taxes.

It is a good political issue. But is it one that you impeach a President for? We the people don't like the idea that our President has not paid taxes commensurate with his income. But will we not admit that he is entitled to make those deductions which, according to his

counsel and the law, are legal? You may not like it, but do you impeach a President for mere negligence in filing personal income taxes?

The question, as has been mentioned by the gentleman before me, is willfulness, and in this case it turns on whether or not the President knew no gift of his papers had been made before July 26, 1969, if in fact they had not already been donated by the actual delivery. I spent a good bit of time in 1969 personally working on a gift of papers in a similar situation and I know how difficult it was because the law practically changed from month to month. You had to really stay close to it.

Now, let's consider some of the facts that have already been mentioned to some extent. At the end of 1968 the President made a much smaller gift to the Archives, \$80,000 worth of his papers, and he personally was deeply involved in this unquestioned legal gift. He discussed the deduction with his attorneys, was briefed on the alternatives, and personally signed the deed conveying the papers.

In 1969 he did not give the same personal attention to this gift. And for a good reason. He was President of the United States. Surely he could rely on the advice of the White House counsel and a noted personal tax attorney to see that it was properly and legally done. In fact, he apparently should not have relied on their competence.

Now, here is a chain of events I would like to go over with you. First, the President made a gift in 1968. Second, in late February 1969 the President told John Ehrlichman, the counsel, that he intended to make a bulk gift of papers during the year. Next, John Ehrlichman wrote a memorandum to the President on the subject of the charitable contributions and deduction. Then the papers were actually transferred to the Archives on March 26 or 27, 1969.

On June 16, Ehrlichman in a memorandum to White House attorney Morgan who was handling the papers conveyed a number of the President's decisions and concerns respecting his income taxes and these papers. In November 1969 appraiser Newman wrote the President and advised him of the value of his papers, and I might add that this appraisal was substantially above the deduction that was actually taken. It is important to note that the President did not sign the gift. It was signed by attorney Morgan and with no written or oral power of attorney from the President.

In April 1970, when the President signed his 1969 income tax return, his tax lawyer told him that he had a 5-year tax shelter here with this charitable deduction. This is in the evidence. This was clearly a strong indication to the President that all necessary steps had been taken to consummate this gift. This was his tax lawyer talking to him.

I think it can be effectively argued that a very confused manner existed with regard to the applicable law, that Congress changed that year, and I would like to go over just briefly the dates there.

First of all, there was no indication the law was to be changed in February.

The CHAIRMAN. The time of the gentleman from Mississippi has expired.

Mr. LOTT. If I could just conclude with one sentence, mere mistake or negligence by the President in filing his tax returns should clearly not be grounds for impeachment.

Thank you very much.

The CHAIRMAN. The gentleman from Michigan.

Mr. HUTCHINSON. I yield 5 minutes to the gentleman from New Jersey, Mr. Maraziti.

The CHAIRMAN. Mr. Maraziti is recognized for 5 minutes.

Mr. MARAZITI. Thank you.

Mr. Chairman, I would like to compliment at this time the gentleman from Iowa, Mr. Mezvinsky. He has done what some of the proponents of articles of impeachment have not done. He has inserted specific allegations.

I do not agree with his position, but I do agree that the article is precisely and properly drawn.

I address myself to paragraph 2. I know that paragraph 2 is an emotional issue and it has more strength on the side of popular interest, but it is really weak as a ground for impeachment.

Let us now analyze this particular article. On July 25, 1969, that date constitutes the last date when a gift of Presidential papers could be made. March 27, 1969, as has been stated, is the date when the Presidential papers were delivered to the National Archives. This is about 4 months before the cutoff date.

There are a number of questions involved here. First, how is title to personal property passed? There are two methods of transfer. One is by a deed of transfer and another legal method is by actual delivery of the personal property.

Now, the second question is, was title transferred on March 27, 1969? Well, the papers were delivered to the National Archives and in my opinion title was transferred on that date.

Now, after that date the President was not able to repossess his papers. He lost possession. He lost control. And he lost title.

A very interesting thing, Mr. Chairman and members of the committee, a Government agency has actually ruled to that effect. And I refer to a letter put in evidence dated June 4, 1974, from the Archivist, and here is what he says in part:

"Long before the onset of the tax controversy"—long before—"It was the position of the General Services Administration, which itself has absolutely no involvement in Federal tax matters"—and here is the important part—"that there had been a valid gift of the subject papers to the United States."

That is a ruling of an agency of the Government of the United States.

Now, if title passed, it is obvious there is no fraud. But I submit to you that even if there is a dispute as to whether title passed, when the President divested himself of possession of his Presidential papers, in a voluntary way, certainly that is enough to negate fraud.

Now, what did the IRS do in this particular situation? What action did they take? Section 6653 of the Internal Revenue Code is relevant. Well, they checked the return and they found that a tax was due. And they assessed a tax.

There are two sections to 6653, section (a) and section (b). Section (a) provides for the assessment of a negligence penalty which was done in this particular case, 5 percent. Mr. Sandman indicated section (b) provides for a fraud penalty which the IRS has the right to assess; 50 percent.



Now, here we have the most thorough and complete audit in the history of the IRS, the audit performed on the return of Mr. Nixon, and the IRS, with its thorough investigation, notwithstanding what has been said here and argued, did not assess the fraud penalty.

Mr. Chairman, I cannot see how this matter can be a ground of impeachment under the Constitution.

Mr. Chairman, in your opening remarks you said, and I concurred, we must be fair to every man. I have tried to be fair to Mr. Nixon and I have tried to persuade the members of this committee to vote against impeachment. It is apparent that we have not succeeded in this respect.

The CHAIRMAN. The time of the gentleman from New Jersey has expired.

The gentleman from Michigan.

Mr. MARAZITI. May I have one-half a minute to finish my sentence, please?

Mr. HUTCHINSON. I'm sorry, I cannot yield to the gentleman any more time. I have not got a speck of time.

The CHAIRMAN. The gentleman from Michigan, Mr. Hutchinson, has consumed 29 minutes and 20 seconds and has 30 minutes and 40 seconds and the gentleman from Iowa has consumed 26 minutes and has 34 minutes remaining.

The gentleman from Iowa.

Mr. MEZVINSKY. Yes, Mr. Chairman. I now yield to Ms. Holtzman from New York, 5 minutes.

Ms. HOLTZMAN. I thank the gentleman for yielding.

The CHAIRMAN. The gentlelady is recognized.

Ms. HOLTZMAN. Thank you very much, Mr. Chairman.

I have a grave concern about the tax matter that we have seen before this committee, and I would like to clear up the record on one point. There has been a lot of talk that the IRS cleared the President on tax fraud. In fact, the IRS did nothing of the kind.

The IRS said that the reason they could not find tax fraud was because they did not have the testimony under oath of Mr. Ehrlichman, Mr. Morgan, and Mr. Ralph Newman, and that without that testimony under oath, they were not able to make a decision one way or the other. But, they did not preclude the possibility that in the future, if these persons did testify under oath, they could connect the taxpayer with fraud in this instance. So, I do not think that it is fair on the record to say that IRS exonerated the President of tax fraud. They found that because persons close to the President and the members of the President's staff would not testify under oath they were unable to reach a conclusive decision.

Mr. WIGGINS. Would the lady answer a question?

Ms. HOLTZMAN. Let me proceed with some other points.

We have discussed the question of the tax deduction for the gift of papers which is very sizable. I think that in order to understand that, we ought to take a look at some of the other matters that were not reported on the President's tax returns during the period 1969 to 1972.

In 1969, there was a sale of Mr. Nixon's New York apartment. He failed to report \$75,924 from the sale of this property. In 1970 there was a sale of a portion of the San Clemente property. Mr. Nixon failed to report a capital gain of \$54,581.

From the period of 1969 through 1971, the Joint Committee staff found that the President did not report royalty income which he should have reported.

In 1972, Mr. Nixon failed to report the use of approximately \$5,000, apparently from campaign funds, that were used to purchase platinum and diamond earrings, Mr. Nixon's, President Nixon's gift to his wife on her 60th birthday.

Now, let me just state—

Mr. DENNIS. Mr. Chairman? Mr. Chairman, I have a point of order that I would like to make.

Mr. BROOKS. Regular order, Mr. Chairman.

Mr. DENNIS. And my point of order is that there is absolutely no testimony in our record on the subject to which the gentlewoman from New York is referring and, therefore, it is not legitimate to argue it here. We just have not heard anything on that subject.

Ms. HOLTZMAN. Mr. Chairman?

The CHAIRMAN. The gentleman's point of order is not well taken. The gentlelady is referring to what she believes, and what has been evidence that has been before the committee.

Mr. DENNIS. Well, I would like to see where it was before the committee. I bet no one can point it out.

Ms. HOLTZMAN. Well—

Mr. BROOKS. May I be heard on the point of order?

Mr. MEZVINSKY. Let the gentlelady finish.

Ms. HOLTZMAN. Yes, Mr. Chairman.

I was referring to certain—

The CHAIRMAN. The gentlelady is certainly qualified to speak for herself.

Ms. HOLTZMAN. Thank you, Mr. Chairman.

I was referring to the draft of the final report of the Select Committee on Presidential Campaign Activities of the U.S. Senate, which we received and I personally received only a week or so ago, and that refers specifically to this matter. And I believe that we had some briefings, at least I did, with respect to this matter from the staff.

Now, let me proceed with respect to this \$5,000, the \$5,000 apparently from campaign funds that was used to purchase diamond earrings. Now, just one thing about this is interesting to note, that this \$5,000 was taken out of a bank by Mr. Bebe Rebozo in June 1972 and went through two separate banks and three separate accounts in 1 day. We have heard of laundering money in the Watergate matter, and I would suggest that this bears a strong resemblance to that.

Finally—

Mr. WIGGINS. Would the gentlelady yield? Is the gentlelady asserting the truth of these matters? We do not have any evidence of that. That is just a draft report. Even the committee does not assert the truth of that.

Ms. HOLTZMAN. I do not think that there is any question about that, Mr. Wiggins.

The CHAIRMAN. If the members would like to interpose objections, they should address the Chair. And I think the gentlelady is making reference to material that has been properly before the committee. Many of these documents have been received at the request of the Chair, with the concurrence of the members from the various com-

mittees of the Congress, and this is a matter that is properly referred to.

Mr. DENNIS. Mr. Chairman, I am objecting on the ground that it is not before us. If this report has been made a part of our record and introduced into our evidence here, then I would not object, but I do not believe that it has been. It is a Senate report which there may have been mention of here sometime. I do not recall it was ever placed in our record, and certainly it was not testimony before us.

The CHAIRMAN. Well, the gentlelady is recognized, and the gentleman's point of order is not sustained.

Ms. HOLTZMAN. I thank the chairman.

I just would like to point out that the Senate select committee's report raises other serious questions, and unfortunately neither the Senate committee nor our committee was able to fully explore these, some of which showed that apparently \$45,000 worth of improvements at Key Biscayne were paid personally by Bebe Rebozo.

Now, one of the problems has been in terms of getting the records regarding these transactions and whether or not, in fact, you find campaign funds deflected at a very large and substantial amount for the President's personal use. I think all of these are serious questions, and I think that they are very difficult questions, because if this country is going to work on a system of voluntary tax payments, then certainly the President of this country ought to set a standard of strict, scrupulous obedience to the law and strict and scrupulous obedience to the tax laws. And I would thank the Chair for recognizing me and I would yield whatever time I have remaining to Mr. Brooks from Texas.

Mr. BROOKS. Mr. Chairman, one of the members, my distinguished colleague, I believe it was Mr. Lott from Mississippi, was concerned about whether we had Cambodia or taxes tonight or tomorrow or in the afternoon, and he reminds me of the story of the hard-working mother who gave her son two ties for his birthday. The next morning he came down with one of the ties on and she said, "Son, you didn't like the other tie."

The CHAIRMAN. The 5 minutes of the gentlelady have expired.

Mr. SANDMAN. Point of parliamentary inquiry.

The CHAIRMAN. The gentleman from Michigan.

Mr. SANDMAN. May I have a moment to ask a question?

Mr. HUTCHINSON. If we do it, then, of course, somebody else will be short on time.

Mr. SANDMAN. This is a very important question.

After I heard the gentlelady from New York, I wanted to ask, whoever chooses to answer this question—

Mr. HUTCHINSON. All right, I will yield. I will yield the gentleman 30 seconds, but no more.

Mr. SANDMAN. In view of all of these accusations, I have got to have one thing settled in my mind. Where do we stand upon what we say here tonight insofar as libel is concerned? Are we protected or immune from that? I would like an answer.

Mr. DOAR. Well, Mr. Chairman, I do not know that I can give you an answer to that. But, I think—I do not know what that has to do with this.

Mr. SANDMAN. You make false accusations against somebody and you are pretty responsible, I would think, but if we are immune from that, I understand why they are said.

The CHAIRMAN. The Chair would like to suggest that I think the members knows what the privilege is and the rights of the members of this committee are, and I think that there is no suggestion that anyone is attempting to libel or is libeling, and I think this is a question again that goes to proper fact, and I do not think that anyone is going to pass on whether or not one is attempting to libel.

Ms. HOLTZMAN. Mr. Chairman, I would like to be heard on a point of personal privilege with respect to that.

The CHAIRMAN. The gentlelady is recognized as a matter of personal privilege.

Ms. HOLTZMAN. I would like to state that I resent the remarks of Mr. Sandman, because I have presented this as fairly as I could in terms of my reading of the Senate reports and materials before me. I certainly agree that we must be fair and honest and honorable, and I have tried my best to do that, and I think by casting aspersions on my integrity, Mr. Sandman is trying to undermine the integrity of the committee, and I personally, personally resent it, and I wish he had considered his remarks.

Mr. SANDMAN. Since the——

The CHAIRMAN. The committee will be in order, and I recognize the gentleman from Michigan.

Mr. HUTCHINSON. I yield 4 minutes to the gentleman from Indiana, Mr. Dennis.

Mr. DENNIS. Thank you, Mr. Hutchinson.

Let us look at the record before us, and the law applicable thereto for just a moment. There are two parts to this proposed article, one deals with allegedly unlawful compensation said to be acquired by the President through Government expenditures at his privately owned properties which were not legitimate Government expenditures, according to the allegation. The other is income tax fraud.

Now, as has already been pointed out, no fraud has been found and, in fact, there has been a contrary finding. You understand that these expenditures which are allegedly improper are charged to the President's income, so because of that technicality, the author of the amendment has charged the President with violation of that constitutional provision on the theory that this is additional income which says that the President shall not receive additional emoluments beyond his statutory compensation.

Now, that is indeed a novel theory, and I call it reaching. It is a civil argument as to whether these things were proper expenditures or not and whether they are income or not. Most of them were security matters approved ahead of time by the Secret Service. All of them were paid for by the Government, and some of them were debatable and were finally decided by the Internal Revenue Service and the Joint Committee that they ought to be disallowed and then they were classed as income. Pure civil argument such as happens between taxpayers and the Government every day of the week.

Now, technically under the income tax laws when you lose one of those arguments, you have got some additional income. But, if that makes you guilty of a constitutional violation of exceeding the emolu-

ments in excess of your salary because you lose an income tax argument with the Internal Revenue people, that is truly reaching, as I say, and it is truly a novel approach. If there were anything wrong here, and it has been found to the contrary, it would have to come under section 641 of the code which makes it a criminal offense to knowingly convert Government property to your own use or to knowingly receive Government property for your own use knowing it is Government property. But, of course, that is a criminal offense and it requires a fraudulent intent. It cannot be proved, so it was not alleged.

So they go to this esoteric, theoretical violation of the Constitution of the United States.

Now, let us go to the matter of income taxes. There again it is purely a civil argument. Everybody realizes that this gift of the papers is all right if it is done on time.

Now, normally you do not need a deed for a gift. You deliver the property with the intent to make a gift, and the other people accept it, which is usually inferred from the fact that they latch onto it and keep it and do not let you have it back, which is what has happened here, and there is a gift, and you do not need a deed, not normally. I do not know whether you needed one here. But, the President said, probably unwisely, that he let these politicians on this committee decide the thing, so he is stuck with it. I will bet you——

The CHAIRMAN. The time of the gentleman has expired.

Mr. DENNIS. Any good tax lawyer could have won the case for him, and there is no fraud here, and it is ridiculous to charge fraud, and the income tax people assessed a negligence penalty under a section which says you cannot use it if there is fraud because there is another penalty there.

The CHAIRMAN. The time of the gentleman has again expired.

The gentleman from Iowa has 29 minutes remaining.

Mr. MEZVINSKY. I yield. Thank you, Mr. Chairman. I yield 5 minutes to Mr. Eilberg.

Mr. EILBERG. Mr. Chairman——

The CHAIRMAN. The gentleman from Pennsylvania is recognized for 5 minutes.

Mr. EILBERG. I have a slightly different point of view than my friend from Indiana.

Mr. Chairman, this is not a simple act of tax fraud or misuse of Government funds. It is a clear case of the President of the United States using the power and prestige of his office to enrich himself to the point of grandeur.

Who else would have the opportunity or the power to decorate and landscape his home with unlimited Federal funds?

During his time in office Mr. Nixon has acted more like an imperial ruler than any of his predecessors and it is obvious that he decided to continue to live in this manner after he left office.

In order to do so he took an illegal tax deduction so he could build a huge personal fortune and he used Federal funds to make his homes into lordly manors.

The decoration and landscaping of Mr. Nixon's homes was supposed to be disguised as necessary security measures, but like any greedy man, Mr. Nixon tried to take too much.

There simply can be no reason why the tax money of the American people should have been used to pay for a \$1,600 shuffleboard court, \$10,000 for the removal of weeds, \$2,800 for a swimming pool heater, and \$587 for a flagpole at Key Biscayne.

At San Clemente we paid \$1,600 for den windows, \$12,988 for a new electric heating system when the old gas one was working perfectly, \$3,800 for a new sewerline, \$8,810 for a sprinkler system and to remove weeds, \$388 for an exhaust fan, and \$1,853 for another flagpole and nearly \$500 to paint that flagpole.

There are many other expenditures, but this gives you a reasonable idea of what was going on.

Now, it might be argued that Mr. Nixon did not approve these improvements and that they were carried out by his subordinates, notably the ubiquitous Mr. Haldeman. But even if the President did not approve—and I do not believe that—where did he think all the money to pay for the redecorating and landscaping was coming from?

Does anyone really believe he thought he was paying for it? It is my opinion that he thought this was his due even though it is clearly prohibited by article II, section 1. The section provides for no increase in pay or emoluments.

As for his taxes, Mr. Nixon sent in a set of returns for the years 1969 through 1973 that would have had the Internal Revenue Service after any ordinary citizen like wolves after a sheep.

Regarding the deduction for the Vice Presidential papers, we have been over that story many times, the story of the so-called tax deductible gift.

Now, it can be argued that the President did not know what was going on. It can be said that the tax laws are so complicated that only the lawyers understand them.

In the case of the President of the United States, this argument has to be labeled as absurd.

We were told that the President went over his tax returns with his accountants and lawyers line by line. It must be assumed that he noticed that huge sums were being deducted for the donation of his Vice Presidential papers.

Are we supposed to believe that he did not ask for the details of how this deduction worked? Are we to assume that his accountants and lawyers decided to commit tax fraud without telling their client?

That is simply not how these people operate in normal circumstances, and they certainly would not take such a chance when the President of the United States is involved.

What I submit happened is that Mr. Nixon took advantage of the fact that a President's tax returns receive only the most cursory review, as events have brought out—and that he tried to get as much as he could while he had the chance.

Mr. Chairman, some time ago Mr. Nixon told the Nation over three television networks that he is not a crook.

If he had not been President when he committed these crimes, that is exactly what the Internal Revenue Service and the Justice Department would have proved he is in a court of law.

It is said that the income tax issue is not a grave enough "constitutional abuse." But there is similarity to the offense in article II—in

that the President used his power to cause the harassment of his enemies.

There is evidence he sought to use the Internal Revenue Service to help his friends; for example, John Wayne and the Reverend Billy Graham. He also used it to help himself—for the IRS was used to short-circuit the investigation of the Joint Congressional Committee and the committee evidence was not pursued.

I would point out that none of the President's tax preparers or lawyers—although they've told various stories—were subpoenaed.

Now, Mr. Chairman, the question is turned over to Jaworski. Even if no article of impeachment is approved, I hope the Special Prosecutor will pursue the matter and that this committee and the House will reserve to itself the right to go further if there are new developments.

The CHAIRMAN. The time of the gentleman has expired.

The gentleman from Michigan has 26 minutes remaining.

Mr. HUTCHINSON. I yield 3 minutes to the gentleman from Maryland, Mr. Hogan.

The CHAIRMAN. The gentleman from Maryland is recognized.

Mr. HOGAN. I thank the gentleman for the time allotted to me.

I think it is unfortunate that these deliberations, which to date have been handled in a very high manner, have deteriorated into partisan wrangling tonight. And I think not only are these deliberations tonight unfair, but the entire tax handling of Mr. Nixon's tax returns are unfair.

Someone has already alluded to the fact that the IRS decided that Mr. Nixon had to pay income on the honeymoon which his daughter spent at Camp David. Now, I ask the ladies and gentlemen of the committee whether or not this is fair?

They also decided that he had to pay \$27,291, or he had an additional income of \$27,291.08 for the travel of his relatives and friends. Now, what that means is that if Air Force One were flying to San Clemente, and Julie or Tricia and their husbands were going along, the President has been required to pay the fair market value of the travel computed on the basis of the cost of traveling first class on commercial airlines to the various destinations reported in the flight logs. This is income to him as declared by IRS. Now, I ask the ladies and gentlemen of this committee if that is fair?

And I address a question to their consciences. Let us take a hypothetical case. Suppose the members of this committee went overseas on a study mission and their wives accompanied them. Now, if that happened, as it has, I wonder if the members would and have reported the first-class air fare on their own income tax as income to them?

I think the answer is obviously they did not.

One of the other things that troubles me very much about this is the not only unfairness but this in no way rises to the level of an impeachable offense. The staff report on grounds for Presidential impeachment makes clear, and I am quoting:

As a technical term, high crime signified a crime against the system of government, not merely a serious crime. This element of injury to the commonwealth, that is, to the state itself and to the Constitution, was historically the criteria for distinguishing a high crime or misdemeanor from an ordinary one.

Now, obviously in the drafting of this, the words previously were included against the United States after high crimes and misdemeanors, so that it is clear that that is what the Founding Fathers intended.

The CHAIRMAN. The time of the gentleman from Maryland has expired.

The gentleman from Iowa has 24 minutes remaining.

Mr. MEZVINSKY. I yield 5 minutes to Mr. Seiberling.

The CHAIRMAN. The gentleman from Ohio is recognized.

Mr. SEIBERLING. Thank you, Mr. Chairman.

Mention has been made that President Lyndon Johnson and Senator Humphrey have also made gifts of their papers and taken deductions. But I think it also ought to be mentioned that there has been at no time any suggestion that there was any backdating of deeds or other fraudulent acts in connection with that gift, their gifts.

Now, I must say that the facts in this situation have given me a great deal of trouble, because the facts are largely undisputed, what is in dispute are the conclusions we ought to draw from them.

The evidence is largely circumstantial, but I remember the writer Thoreau once said that "Some circumstantial evidence is very strong, as when you find a trout in the milk."

Now, what have we found in this case? We have found a fraudulent deed and I do not think there is any doubt of it at least I do not have any doubt about that in my mind. And that deed was used to secure an enormous tax deduction.

Now, the question is whether the President was involved in that fraud. The Internal Revenue Service has already determined that he was involved in negligence, and they assessed negligence penalties against him which he has paid.

Now, the question is how do we decide whether there is sufficient case to send it to the Senate for a trial? And my feeling, after considering all of the principal factors, is that we should do so and I would just like to outline very quickly these because they have been thrown out in detail here.

First is that the President signed income tax and by so doing verified that all of the facts therein were true to the best of his knowledge and belief, and that he had personally read the return. Second we also have evidence that before he signed it he went over it page by page with his lawyer.

Third, we find that he failed to answer questions addressed to him by the Internal Revenue Service regarding certain key facts and he refused to answer them. The fourth point is that he has shown a habit of great attention to detail regarding his personal finances.

Fifth of all, we have the great size of this deduction, \$576,000, a huge sum of money. And finally we have the testimony that if the case had involved anyone other than the President itself it would have been referred to a grand jury for prosecution.

Now, it seems to me that we cannot have one standard for the President and another standard for all of the other taxpayers. Either we are going to have to hold him to the same standard and submit him to the same process, or we are going to have to lower those standards and make things easier on other taxpayers.



Now, maybe as a taxpayer and as taxpayers we would prefer to have it that way but I think that if we are going to protect the integrity of the system we are going to have to subject him to the same kind of scrutiny that any other taxpayer would be subject to.

And that means, in my opinion, a trial so that all of the facts can be brought out, and that trial of course, has to be in the Senate as far as this body is concerned.

Now, we have not discussed with respect to San Clemente and Key Biscayne the benefits and emoluments and the fact that there is also an abuse of power aspect to this matter. The President clearly has used his power through his aides and personally over the General Services Administration and over the Secret Service to obtain benefits which he would not otherwise have obtained. And this has been a source of embarrassment to the GSA and the Secret Service. And as I recall when the questions first were submitted to them by the clerk as to whether expenditures had been made for the President's personal benefit at San Clemente, the GSA refused to answer on the grounds that the facts were classified because of national security.

Now, the Secret Service the next week released some of the facts so that they could not have been national security. But, this is an example of the spuriousness of the concept of national security to cover up embarrassing things such as we have seen in earlier discussions before this committee.

And if I have any time left, I would like to ask the gentleman from Texas, Mr. Brooks, if he could give us the chronology of how the figures were gradually brought out as to the expenditure.

The CHAIRMAN. The gentleman has consumed 5 minutes.

Mr. MEZVINSKY. I will give him another minute, Mr. Chairman.

Mr. SEIBERLING. Thank you. I would yield to the gentleman from Texas.

Mr. BROOKS. I would be delighted, my distinguished friend.

In May of 1973, the GSA, somewhat reluctantly, under pressure from the press, said that they had spent about \$39,000 on those properties, on certain parts of it that they asked about.

Then in June of that same year they found that they had spent \$1.9 million.

And a little bit later, by August of that same year, 1973, last year they got the number up to \$3,700,000. And then a little later there was considerable pressure and we announced hearings in another congressional committee and when it became obvious that a hearing was going to be held then the White House announced that all agencies totaled about \$10 million expenditures at Key Biscayne and San Clemente.

Mr. WIGGINS. Would the gentleman yield?

Mr. BROOKS. And when the hearing was over, it was \$17 million.

The CHAIRMAN. The time of the gentleman has expired.

Mr. WIGGINS. Would the gentleman yield? That expression has to be corrected.

The CHAIRMAN. The gentleman's 1 minute has expired.

The gentleman from Michigan has 23 minutes remaining.

Mr. HUTCHINSON. I yield 4 minutes to the gentleman from Iowa, Mr. Mayne.

Mr. MAYNE. I yield 30 seconds to the gentleman from California, Mr. Wiggins.

Mr. WIGGINS. Well, in fairness Mr. Brooks, you should indicate that the numbers that you mentioned, the \$17 million, were not improvements on the President's property, but included that entire military office complex at San Clemente. Now, is that not a fact?

Mr. BROOKS. Would the gentleman allow me to respond?

Mr. WIGGINS. Well, I know the answer. If you would affirm it then we can move on to the gentleman's time. That is the correct state of affairs.

Mr. BROOKS. I wish you would give them the breakdown on it. It would be helpful.

Mr. WIGGINS. You know you are not talking about the President's property. That property is owned by the Coast Guard out there.

I yield back to this gentleman.

The CHAIRMAN. The 30 seconds of the gentleman have expired.

Mr. MAYNE. May I proceed?

The CHAIRMAN. The gentleman from Iowa.

Mr. MAYNE. Thank you, Mr. Chairman. I think I would set a higher standard even than the gentleman from Ohio, Mr. Seiberling.

It seems to me ladies and gentleman, that a President has a very high obligation to set a good example to the American people in carrying out his personal as well as his public responsibilities and that is especially true of the way in which he claims deductions and declares income on his Federal income tax returns.

Regrettably it seems to me this President has set us a very sorry example in the way that he has performed this basic obligation of American citizenship. Even if it were technically legal, I think it was highly questionable for him to claim such huge deductions for his personal papers.

And for that matter, it was a very grave mistake by this Congress of the United States for it to ever authorize such a deduction in the first place.

I was not in the Congress when that action was taken, that law was passed, but I was here in time to vote for its repeal in 1969.

I think we have to accept the fact though that this provision was not law and the President's tax adviser did advise him to take advantage of it. I wish they had not and I certainly wish he had not taken the advice. But, much as I deplore the way in which his tax affairs were handled, the question remains did he commit criminal fraud in connection with his taxes after listening to the evidence very carefully, and it is my considered judgment that proof of criminal fraud is certainly insufficient in this case.

And I was particularly impressed by the testimony of one of the few witnesses who was permitted to appear and testify before our committee in person. That was Mr. Herbert Kalmbach who related how he was present when the first tax return in which this deduction was claimed was read to the President by his tax attorney, Mr. DeMarco. And Mr. DeMarco went through the return page by page. They said it took about 10 minutes and then Mr. DeMarco did assure the President that this was a legitimate, a valid tax deduction, not only for that year but for 4 or 5 years in the future.

So the evidence does indicate that the President, like many Americans, relied on the advice of his tax advisers.

Now, even if criminal fraud had been proved, and I think quite clearly it is not, then we would still have the question whether it is a high crime or misdemeanor sufficient to impeach under the Constitution, because that is why we are here, ladies and gentlemen, to determine whether the President should be impeached, not to comb through every minute detail of his personal taxes for the past 6 years, raking up every possible minutia which could prejudice the President on national television.

I certainly do not believe that Madison and the Framers of the Constitution had in mind any such recital as we are hearing here tonight. They did not want the President to be removable simply because he did not enjoy the support and confidence of a majority in the Congress.

The CHAIRMAN. The time of the gentleman has expired.

The gentleman from Iowa, Mr. Mezvinsky.

MR. MEZVINSKY. Mr. Speaker, I know it is a sensitive issue and I don't want to have acrimony. I just want to make one point before I yield time to the gentleman from Texas. Let me say that I respect this Congress. I also respect the Joint Committee on Internal Revenue Taxation. I believe that they made a conscientious effort to look at the matter of the President's taxes. It is serious.

At a critical time they sent questions to the President, specifically regarding his personal knowledge about matters which had a bearing on the question of fraud. Mr. Nixon did not answer those questions.

The Joint Committee did not rule on fraud instead referring that question to this committee. The IRS did say earlier this year, and this was cited by Mr. Sandman, that at that time there was not enough evidence to resolve the question of fraud one way or the other. But 7 days later what did they do? They sent a letter to Mr. Jaworski saying let's pursue the case for possible prosecution by the grand jury.

But I want to bring out—

MR. DENNIS. Will the gentleman yield?

MR. MEZVINSKY. I will be glad to take into account the gentleman's remarks in a few minutes.

In the midpart of July I asked Mr. St. Clair—we sent a letter, too, but I asked Mr. St. Clair as the President's counsel, Mr. St. Clair, would you tell the President that we are concerned about his taxes and ask him whether he would respond to the questions that were submitted to him on the tax matter?

I also asked whether or not the President would give an accounting of a special White House fund that amounted to \$1½ million. I also asked if he would supply information as to his New York State income taxes.

I am sorry to report to this committee that the answer was negative to all these requests.

He not only didn't respond to the Joint Committee but he didn't care to respond to questions directed by members of this committee. And I would say that that kind of attitude can not be tolerated by this committee nor can the President's disregard for our revenue laws be tolerated by our tax system that is sacred to this country.

I now yield 10 minutes to the gentleman from Texas.

Mr. DENNIS. Will the gentleman yield for a—

The CHAIRMAN. The gentleman has 16½ minutes remaining. His time—no. The gentleman has 15½ minutes remaining.

Mr. DRINAN. Mr. Chairman, would Mr. Brooks yield for 1 minute for a question?

Mr. BROOKS. I would be delighted to if I have the floor now.

Mr. DRINAN. Mr. Brooks would you explain a little bit more please about the word "emoluments" and I read from the Constitution. This point bothers me, that what precisely does it mean, that the President shall not receive within the period of his Presidency any other emoluments from the United States and that is a word we don't use very often and I have found no law on, particularly no law in relationship to impeachment.

Now, do I understand correctly the exact sum that you are suggesting is the other emolument that he has received? Is that the \$94,000?

Mr. BROOKS. That is absolutely correct.

Mr. DRINAN. Could you tell us more about any history of emoluments? Has the U.S. Government ever sought to get back any emolument from a President? Has any President ever been challenged as to this particular section of the Constitution before?

Mr. BROOKS. Not that I know of, but it has been on the books since 1789. And emolument in my judgment and I didn't even look it up, means do you get something that is good—money. My judgment is that anybody in this country, if you ask them what is an emolument of the office that you are not supposed to get any more of, it means you are not supposed to get any more money.

And I think that he did in that he received \$94,000 worth of value which is the tangible value that was assigned to the values of the improvements on his houses and for travel—not assigned by me, but assigned by the IRS. And they determined that he owed taxes on the \$94,000. They said that \$67,388 of that money—was for improvements to those properties and that \$27,291 was for travel expenditures. And then they said very concisely that in view of the taxpayer's relation to the U.S. Government's Chief Executive Officer the above items constitute additional compensation to him for the performance of his services for the Government. And I thought that that met on all fours this provision in the Constitution that he shall not receive any additional money, any additional emolument.

Mr. DRINAN. Do I understand correctly Mr. Brooks that he has in fact paid the tax assessed on the \$94,000?

Mr. BROOKS. He has paid a portion of that tax. A part of those improvements were made in 1969 and he has not paid the 1969 taxes although he said in his news release that he would pay them.

Mr. DRINAN. But he is not legally required to pay the taxes—

Mr. BROOKS. He was not then but he volunteered and said he would pay them. He did pay the taxes, as I understand it, in 1970, 1971, and 1972, a portion of which was that same type of emolument based on improvements to his personal properties.

Mr. DRINAN. One last question, Mr. Brooks, if I may, are these two items in your article inseparable, the items of taxes with which I and others here are obviously are having difficulty and the question of emolument? Are they so inseparable that they must remain together?

Mr. BROOKS. Certainly either could be a separate article of impeachment.

Mr. DRINAN. Thank you very much.

The CHAIRMAN. The gentleman from Iowa now has 12 minutes remaining. The gentleman from Michigan, Mr. Hutchinson, has 19 minutes remaining.

The gentleman from Michigan.

Mr. HUTCHINSON. Mr. Chairman, I yield 4 minutes to the gentleman from Maine, Mr. Cohen.

Mr. COHEN. Thank you.

The CHAIRMAN. Mr. Cohen is recognized.

Mr. COHEN. Mr. Chairman, would you indicate to me when 2 minutes of my time have expired?

The CHAIRMAN. The gentleman will be notified.

Mr. COHEN. First, I would like to say I do not wish to ascribe any malevolent motives to the majority members of this committee and the timing of this issue. I think it is an important issue which should be discussed and prime time is as good as any other.

I would also like to suggest to Mr. Brooks that it is my hope that this committee will, in its good wisdom, see fit to reject both of the ties that the gentleman has selected.

Mr. JENNER, I would like to address a couple of questions to you, and if I could just have yes or no answers, because of the time limitation.

My understanding is that the Joint Committee sent interrogatories to the President that were not answered, correct?

Mr. JENNER. That is correct.

Mr. COHEN. Did this committee every send similar interrogatories to the President?

Mr. JENNER. It did not.

Mr. COHEN. Did this committee every undertake any separate investigative work of its own on this matter?

Mr. JENNER. Not of that character.

Mr. COHEN. So even though the Joint Committee or Commission said it did not deal with the question of tax fraud, even though the Justice Department has not seen fit to prosecute the issue, and even though the Internal Revenue Service said it was civil negligence and not fraud, this committee has not done anything independent on its own to establish tax fraud, is that correct?

Mr. JENNER. Excuse me. We have undertaken some interviews, of course, Congressman Cohen, but we do not have the capability to make the type of inquiry that a fraud investigation requires.

Mr. COHEN. I understand that.

Let me ask you this question. If the deed as to the 1969 papers had, in fact, been properly executed prior to July 1 of that year that it became effective, would the President's deduction have been allowed based upon the information that we have?

Mr. JENNER. Yes, subject to the question of whether the deed was delivered.

Mr. COHEN. Right. Now it seems to me that our investigation—the question before us is whether or not the President had knowledge that the deed had not been delivered. Isn't that the real issue, as to whether the gift had been completed?

Mr. JENNER. You are really asking two questions. To the last portion of your question, the answer is yes, as to whether the gift had been completed.

Mr. COHEN. And he wouldn't necessarily know whether the gift had been—

The CHAIRMAN. The gentleman has consumed 2 minutes.

Mr. COHEN. He wouldn't necessarily know whether the gift had been delivered necessarily by looking at his tax return, would he?

Mr. JENNER. That is very difficult. It depends on what knowledge he had.

Mr. COHEN. But not on the tax return itself?

Mr. JENNER. Not from the face of the return, unless he knew the return didn't correctly reflect what he otherwise knew.

Mr. COHEN. Just one final point. I have heard the IRS praised day after day by my good friend, Mr. Sarbanes from Maryland, for its integrity, that it did not bend and yield to the pressures of the President of the United States and the question I would ask, if in fact there was criminal fraud involved, ask yourself this question. Wouldn't this independent agency have asked the Justice Department to bring it before the grand jury for prosecution?

Now, I yield to my good friend from California, Mr. Waldie.

The CHAIRMAN. The gentleman is recognized.

Mr. WALDIE. Mr. Chairman, I want to speak against this article.

The CHAIRMAN. The gentleman has 1 minute and 15 seconds.

Mr. WALDIE. I speak against this article because of my theory that the impeachment process is a process designed to redefine Presidential powers in cases where there has been enormous abuse of those powers and then to limit the powers as a concluding result of the impeachment process. And though I find the conduct of the President in these instances to have been shabby, to have been unacceptable, and to have been disgraceful even, I do not find a Presidential power that has been so grossly abused that it deserves redefinition and limiting. If there has been any abuse of a Presidential power it has been that the President may have utilized his office to cower the Internal Revenue Service from conducting a complete and thorough investigation. That has not been alleged. If that had been the case, that should have been included within article II of yesterday's action on this committee, when we were dealing with the failure of the President to faithfully execute the law.

I do find then, that this is not an abuse of power sufficient to warrant impeachment and thereby a redefinition and a limitation of that power, and I hope the article will be rejected.

The CHAIRMAN. The time of the gentleman has expired.

The gentleman from Michigan has 15 minutes remaining.

Mr. HUTCHINSON. How much time has the gentleman from—

The CHAIRMAN. The gentleman from Iowa has 12 minutes remaining. I recognize the gentleman from Michigan.

Mr. HUTCHINSON. Mr. Chairman, I yield 5 minutes to the gentleman from Virginia, Mr. Butler.

The CHAIRMAN. Mr. Butler is recognized for 5 minutes.

Mr. BUTLER. Thank you, Mr. Chairman. I yield 2 minutes to the gentleman from Utah, Mr. Owens.

The CHAIRMAN. Mr. Owens.

Mr. OWENS. I thank the gentleman from Virginia.

I believe Mr. Nixon did knowingly underpay his taxes in the 4 years in question by taking unauthorized deductions, and that he knowingly ordered or caused to be ordered improvements on his properties in Florida and California at Government expense. These are offenses against the people and I think the Government should pursue its remedies.

But you don't impeach for every offense, nor, on the other hand, do you excuse any offense by saying others did it. But whether to impeach or not is a question of judgment permitted to each of the members. Is it sufficient? Is it that serious? And on the evidence available, these offenses do not rise, in my opinion, to the level of impeachability.

It is not sufficient to the standards I set. I promised the people in Utah when I sat down to impeachment, that I would impeach only if there were hard evidence and which was sufficient to support conviction in the Senate, and I found it in four instances and I do not find it in this sixth, to which I feel I must apply the same remedy.

At least twice in the past, once at the first presentation of evidence and once as recently as 2 weeks ago, I asked the staff to obtain the sworn testimony of the President's attorneys and the appraiser and others. They were unable to get it, as I understand, because of the expressed wishes of the Special Prosecutor, Mr. Jaworski, and so we are here having to decide this issue without any hard evidence which will sustain tying the President to the fraudulent deed or which will support, in my opinion, the inference and close the inferential gap that has to be closed in order to charge the President——

The CHAIRMAN. The gentleman has consumed 2 minutes.

Mr. OWENS [continuing]. With an impeachable offense and based on that evidence, I urge my colleagues to—based on that lack of evidence, I urge my colleagues to reject this article.

Mr. BUTLER. Mr. Chairman, I yield 2 minutes to the gentleman from Arkansas.

Mr. THORNTON. I thank the gentleman for yielding. I think it is apparent that in this area there has been a breach of faith with the American people with regard to incorrect income tax returns and the improper expenditure of public funds. But it is my view that these charges may be reached in due course in the regular process of law.

This committee is not a tax court nor criminal court nor should it endeavor to become one. Our charge is serious and full enough, in determining whether high crimes and misdemeanors affecting the security of our system of Government must be brought to the attention of the full House, debated there, and if found to exist, presented to the Senate. And to my view, by so doing and by bringing those serious charges to the attention of the House which we have already brought we are doing our part to ensure that this system of justice—which will enable all men to receive equal treatment before the law—will continue and can be applied in these instances which have been described to us tonight.

Mr. BUTLER. I thank the gentleman. Mr. Chairman——

The CHAIRMAN. The gentleman from Virginia has 1 minute.

Mr. BUTLER. Mr. Chairman, I would like——

The CHAIRMAN. One and a half minutes remaining. I am sorry.

Mr. BUTLER. I will take what I have Mr. Chairman, and I thank you.

I would just like to repeat what I said earlier today, that the impeachment power in the House of Representatives is discretionary. Sound judgment would indicate that we not add this article to the trial burden we already have. I will therefore vote against the article before us at this moment, and I yield the remainder of my time to the gentleman from Maine.

Mr. COHEN. I thank the gentleman for yielding. I would just like to say I would associate myself with the remarks of the gentleman from Iowa, Mr. Mayne, in that this was indeed morally shabby conduct, but I would also point out that the gentlelady from New York said this committee has not fully explored the question nor has the Senate and we should continue our investigation, we should not seek to ratify our suspicions and beliefs into clear and convincing evidence on the issue of criminal fraud.

Mr. BUTLER. Will the gentleman yield?

The CHAIRMAN. The time of the gentleman from Virginia has expired.

The gentleman from Iowa has 12 minutes remaining.

Mr. MEZVINSKY. Mr. Seiberling, I yield 1 additional minute.

Mr. SEIBERLING. Thank you.

I would like to address a question to the Chair.

Mr. Chairman, it seems to me in view of some of the statements here that some of the members feel that this question may be—that action on this question may be premature in that there is still some incompleteness to the investigation of this whole matter.

And I would like to ask the Chair if it isn't correct that the resolution, House Resolution 803 under which we are operating, will authorize the staff to continue to keep the investigation open on this particular point even after we have voted on this matter this evening. Is that correct?

The CHAIRMAN. Pursuant to House Resolution 803 under which this committee has been conducting its inquiry, the vitality of the investigation will continue and the investigation therefore into this area will continue.

Mr. SEIBERLING. I thank the Chairman.

The CHAIRMAN. The gentleman now has 11 minutes remaining, the gentleman from Iowa.

Mr. MEZVINSKY. I yield 11 of those to the gentleman from Texas, Mr. Brooks.

Mr. BROOKS. Mr. Chairman, I want to explain a little further the detail as to how the—

The CHAIRMAN. Will the gentleman defer? Does the gentleman, who controls the time, and who has the right to assert his arguments last, does he intend to use all of the time now?

Mr. MEZVINSKY. I would yield the balance of my time to the gentleman from Texas, Mr. Brooks.

The CHAIRMAN. The gentleman has 11 minutes.

Mr. BROOKS. Mr. Chairman, to clarify the fact that the President does take a very personal interest in his activities, in our conversations before this committee and in testimony, Mr. Butterfield testified that



Mr. Haldeman never did anything without the knowledge of the President.

I want to quote from that testimony of Mr. Butterfield.

Mr. JENNER. Was there any occasion during all of the time that you were at the White House that there came to your attention that Haldeman ever did anything without the knowledge of the President?

Mr. BUTTERFIELD. No, never.

Mr. JENNER. Dealing with White House affairs?

Mr. BUTTERFIELD. No, never. Nothing unilateral at all. He was essentially—I may have said this, but an implementer. Mr. Haldeman implemented the decisions of the President, as did Mr. Ehrlichman, but perhaps to a lesser extent. But Haldeman especially was an implementer because the President ran his own personal affairs. He was not a decisionmaker.

Mr. JENNER. Mr. Butterfield, would you repeat that for me? I didn't hear it.

Mr. BUTTERFIELD. I said I did not know Mr. Haldeman to be a decisionmaker. He was entirely in my view an implementer. I can hardly recall the decisions, any decisions that he made, unless that it was that the White House staff mess personnel would wear jackets or something along that line. He implemented the President's decisions. The President was the decisionmaker. The President was 100 percent in charge.

I want to point out that the last witness before this committee, Mr. Herb Kalmbach, the President's personal attorney who served as the President's personal representative at San Clemente, and during his appearance the following discussion took place between Mr. Kalmbach and our friend Mr. Jenner.

Mr. JENNER. A previous witness has testified, as a matter of fact, Alexander Butterfield, that the President was "very interested" in the grounds at Key Biscayne, Camp David, San Clemente, the house, the cottage and the grounds. From your experience in serving in the capacity you indicated, is that a fair characterization?

Mr. KALMBACH. It is.

Mr. JENNER. And that arises from your personal knowledge and experience in dealing with this matter?

Mr. KALMBACH. Yes.

Mr. RAILSBACK. Mr. Chairman—would the gentleman yield?

Mr. BROOKS. I would rather complete this.

Mr. RAILSBACK. Go ahead.

Mr. BROOKS. Mr. Kalmbach, in reply to another question—

Mr. Jenner, I recall walking with the President and Mrs. Nixon around the grounds subsequent to the time that they had moved into their property and, of course, were in San Clemente. They pointed out to me, the President pointed out to me and also Mrs. Nixon, certain rosebushes that should be pulled up and changed and moved around. There was a great interest in the grounds, a great interest in all things relative to that property.

Mr. JENNER. And did the President go into some detail as to specific items?

Mr. KALMBACH. Yes, sir, of course. I recall his attention to detail involved in the building of the swimming pool at the San Clemente property.

Down a couple of questions—

Mr. JENNER. Well was that in 1969?

Mr. KALMBACH. I don't recall when the pool—we had a meeting I recall in one of the gazebos with the President, Mr. Rebozo, Mr. Ehrlichman, myself, Harold Lynch and I think Frank DeMarco were there, and the President went over the schematics and the layout with great attention and I cannot pinpoint the date. My logs would show that, I believe.

Now, gentlemen, I would at this time yield to my friend, Mr. Railsback.

Mr. RAILSBACK. I thank the gentleman for yielding.

Are you—are you establishing or trying to establish by reference to Butterfield that the President knew what Haldeman knew or—in other words are you trying to say that there was a knowing conversion by reason of what Haldeman knew or can you just explain that a little?

Mr. BROOKS. What I am trying to establish is that very clearly these assistants and close associates and executives of the President did what he wanted them to do and that Haldeman testified and Butterfield testified that he, the President, made the decisions and that they implemented them. It is just that simple.

It was not something that they individually thought up and did. These were implementations of the President's ideas, to quote his own people.

Now, may I conclude—

Mr. RAILSBACK. Would you just yield? I thought that Ehrlichman was the primary participant in the San Clemente matter and not Haldeman. Also what about Colson saying the President didn't want to know a lot? In other words, he left it to his subordinates.

Mr. BROOKS. I am just quoting Mr. Haldeman and Mr. Butterfield who sat outside the door all those years. And I would reserve my closing time and yield—reserve that 6 minutes, Mr. Chairman, if I might.

Mr. DENNIS. Can't do that under the rules. Regular order, Mr. Chairman.

Mr. BROOKS. I can yield it back to Mr. Mezvinsky and then get it if that would suit the technicalities of the situation.

The CHAIRMAN. The gentleman has 6 minutes remaining and unless the gentleman from Michigan wants to proceed, the gentleman is now to consume his time.

Mr. RANGEL. Will the gentleman yield?

Mr. BROOKS. Certainly I yield to my distinguished friend from New York, Mr. Rangel.

Mr. RANGEL. Thank you. We have a real problem here as it relates to the President's involvement. The President did sign that tax form. We all sign a tax form and we say that to the best of our knowledge the facts in that form are true.

The unique thing about this case is that when the Internal Revenue did finally review the President's tax forms, it said because it was the President of the United States that they didn't feel that they should approach the President. It appears now that when the President saw fit to turn over all of his books and records to the Joint Committee, the committee did what the Internal Revenue Service did not do, and that is contact the taxpayer. We know that is basic regardless of what office we hold.

When there are questions in connection with a tax form, the very least that should be done is you contact the taxpayer and have him explain away the discrepancies.

In this particular case we find the President's men, that is, these tax experts, not cooperating with the Internal Revenue. We find the President not cooperating and answering the questions of the Joint Committee. And, if these things were to be held in abeyance it would mean that any President who is not subject to criminal indictment

will never have his conduct as relates to payment or nonpayment of income taxes reviewed.

Now, a lot of talk has been said that because the word "fraudulently" was accepted as a part of this article that we have the responsibility to prove the President's guilt beyond a reasonable doubt.

If this were so, I would not be able to vote for the article. But the President's guilt beyond a reasonable doubt involves criminal liability which at this time the President has immunity from.

It seems to me that the buck has to stop somewhere. The IRS will not ask the taxpayer. The Joint Committee said that it would not go into criminal liability because that was a question for this committee. And we are merely recommending to the House under a resolution which allows for a continued investigation that the President be made to answer for not paying the taxes when it is clear he should have paid it.

It seems to me that the President again will have an opportunity to have more information presented to the Members of the House of Representatives since it has not been presented to the Congress or the IRS and then the President, too, will have the opportunity to come forward at long last in the Senate of the United States and if in fact he is not guilty he will have the opportunity to present the facts.

I thank the gentleman for yielding to me and I yield back.

Mr. HUNGATE. Will the gentleman from Texas yield?

The CHAIRMAN. The gentleman from Texas has 3 minutes remaining.

Mr. BROOKS. I yield 2 and a half minutes. I would yield—

Mr. HUNGATE. I thank the gentleman and I would just say that I think the gentleman from Iowa, Mr. Mezvinsky, and the gentleman from Texas and others have done a valuable public service and continue to do so. I would urge them to consider the possible withdrawal of this article. I think there is a case here but in my judgment I am having trouble deciding if it has as yet been made.

Mr. BROOKS. Mr. Chairman, I want to thank my friend for his comments. And I would say the people who believe in everybody paying their taxes ought to vote for it. I think that most of the people in my district pay theirs. I think we have to answer that question ourselves if we think that it ought to be done in that fashion.

Now, during the early weeks of this investigation we spent a lot of hours discussing what constitutes an impeachable offense under the Constitution. The prevailing view and one to which I subscribe is that misconduct in office or misuse of the power of the Presidency constitutes an impeachable offense. There are those, however, who have a much more restrictive interpretation of the impeachment clause and require proof to the commission of a criminal act.

I submit that this article charging violation of the emoluments clause of the Constitution in violation of the tax law fits foursquare with even the most restrictive interpretation of what constitutes an impeachable offense. We have evidence of criminal violations of one of the most basic laws of the land, the Internal Revenue Code, a law which gives every American an opportunity to pay their taxes and with which every American is very familiar.

Every taxpayer agonizes over the honesty and accuracy of his returns. Very few are willing to risk the threat of heavy fines or imprisonment. Millions of Americans will view this evidence as a so-called smoking gun. We have put before the Americans proof of the specific violation of our criminal statutes by the President.

The question of his accountability is now up to us, to this Congress. Those who bargained so long and so hard during these proceedings for proof, for specifics, for citations of criminal violations, now have before them precisely what they have been asking for, the specific proof of the execution of fraudulent deeds, the filing of false returns, the failure to report income, the enrichment of one's personal estate at public expense, and these must be viewed as proof of impeachable offenses.

No President is exempt under our U.S. Constitution and the laws of the United States from accountability for personal misdeeds any more than he is for official misdeeds. And I think that we on this committee in our effort to fairly evaluate the President's activities must show the American people that all men are treated equally under the law.

The CHAIRMAN. The time of the gentleman from Texas has expired.

The gentleman from Michigan has 10 minutes remaining.

Mr. DRINAN. Mr. Hutchinson, would you yield 1 minute to me in opposition?

Mr. HUTCHINSON. I'm sorry, Mr. Drinan, I don't have any time to yield. It is all committed. If you can get the gentlemen whom I have committed myself to recognize to yield to you of course you can.

Mr. Chairman, I yield 4 minutes to the gentleman from Ohio, Mr. Latta.

Mr. LATTA. Thank you, Mr. Chairman.

One happy thought always arises when you get down to the junior member of this committee and that is the debate is about to end.

Let me say this has been a good debate. We have gone into the matter of taxes. We have gone into the matter of security for the President of the United States. Both of these subjects could command hours of discussion time and I have 2 minutes for each.

At the outset let me address myself to the question of taxes. I couldn't agree more with the gentleman from Texas, Mr. Brooks, that every American, including the President of the United States, Members of Congress, and others should pay every single nickel or even down to the penny of taxes that they owe. And, I might say as Members of Congress know that our good friend Pat Jennings, the Clerk of the House, sees to it that we pay ours every month. He takes a very sizable chunk out of my salary.

In fact, I am pleased to admit that he takes \$1,000 a month out of my salary at the end of the month. So we pay our taxes and I think the President of the United States should pay his taxes likewise.

And I find him guilty tonight of bad judgment and gross negligence. Bad judgment in following the advice of Lyndon Baines Johnson to ever take a deduction for the Presidential, Vice Presidential papers. And certainly the Congress of the United States is to be commended for repealing that legislation which permitted those type deductions.

And second, I find him guilty of gross negligence for not taking more time in going over his tax returns at the time he signed them. All through this investigation I have found the President of the United States too busy to take care of the little details that we have talked about here tonight, and I don't consider the matter of taxes a little detail.

I have before me the transcript. We had Mr. Kalmbach, the President's personal attorney, testify before this committee about him going in for the ceremonial signing because he had only seen the President of the United States—get this—his personal attorney—five or six times in about 5 years. So he went along to witness the ceremonial signing of this tax return. And what did he say under questioning by Mr. St. Clair?

"How long were you in the President's presence?"

"Approximately, well, 35 to 40 minutes."

Well, now, I say to you that it takes me 10 times that long to go over 1 page of my very simple tax return. But here the President of the United States goes over a very complicated tax return and they are only in his office 35 to 40 minutes.

Now, I say that is gross negligence. He should have taken a longer look.

And in the meantime they talked about other things and we have heard testimony here tonight that would lead you to believe that he went over page by page, line by line, and the evidence does not support that statement.

Now, the President, as has been alluded to here tonight, has paid those taxes with the exception of the 1969. He doesn't have to pay them but he has promised to pay 1969. We could go into that in great detail and I am certain that the President will pay 1969 even though he is not required to do so.

Let's skip along to what Mr. Brooks has talked about, security precautions out at these Presidential mansions or homes or whatever he prefers to call them.

Now, Mr. Brooks is in a very unique situation. He was chairman of the subcommittee that went into these matters but likewise there was another subcommittee of this Congress that went into them also and that happens to be a subcommittee of the Appropriations Committee that paid the bills.

Now, what was the finding of this subcommittee? Did they find anything grossly wrong as has been alluded to here by Mr. Brooks?

Absolutely not. And we had a press conference by the gentleman from Oklahoma who happens to chair that subcommittee when he stated in so many words that was true. And I might say that I talked to that gentleman this afternoon on the floor of the House and he is still of that opinion.

We have gross negligence but it is on the part of the GSA in putting these security precautions and I heard him say this afternoon—

The CHAIRMAN. The gentleman's time has expired.

Mr. LATTA [continuing]. That it is cheaper to keep Presidents alive than to bury them.

Mr. HUTCHINSON. Mr. Chairman, I yield 1 minute to the gentleman from New York, Mr. Fish.

The CHAIRMAN. Mr. Fish is recognized for 1 minute.

Mr. FISH. I thank the gentleman very much for yielding to me. I certainly want to associate myself with what has been said about the tax situation being a bad scene. Nevertheless, there is not to be found before us evidence that the President acted willfully to evade his taxes. I do not think that can be said on the basis of all the careful work that our staff has put before us.

We do know that the IRS investigation has been cursory. They, no more than we, have not had under oath the key witnesses in this matter. We also know that they have referred the matter to the Special Prosecutor and I believe that is where the matter should rest as far as we are concerned. If in the course of the Special Prosecutor's investigation new information comes to light, we have the reserve power to amend our articles at any time in the future, and I yield to the gentleman from Indiana.

Mr. DENNIS. I thank the gentleman and I think it only fair to point out that what has been referred to the Special Prosecutor is not specifically the President but the people who prepared the returns under a separate section which applies only to the man who prepares the return such as the agents or the accountants or the lawyer and does not come under the section where the taxpayer himself is involved.

The CHAIRMAN. The time of the gentleman from New York, the 1 minute, has expired.

Mr. HUTCHINSON. Mr. Chairman, I yield the balance of my time, 5 minutes, to the gentleman from California, Mr. Moorhead.

The CHAIRMAN. Mr. Moorhead is recognized for 5 minutes.

Mr. MOORHEAD. Thank you very much.

Thank you, Mr. Chairman.

There is no question but what one of the most inflammatory subjects to the American people is taxation. They are always alarmed whenever they feel a public servant or someone who has a lot of money is not paying his just share of the taxes. So that is one reason I am sure that this particular matter has been brought before this committee.

At the same time, in looking over the facts of this case, it is clear that our problems are caused by two particular things, two particular laws. We had a bad law that allowed public officials to take deductions on the gift of their public papers. We had another law that was passed after the death of Senator Kennedy and a number of other public officials which encouraged extra security for our top public officials, so that they would live through their terms in office and not die in office through tragic events of that time.

Mr. Nixon made the gift of the personal property involved early in 1969, March 27. The law taking away the right to make that gift and getting a tax deduction was not signed into law until late December of that same year, 9 months later. The law, when passed, dated back to July. It did not date back to March.

Anyone who has had anything to do with the gift of personal property knows that when the property has been delivered and, control and ownership of the property given up in that manner, there is a valid gift.

GSA has determined that there was a valid gift of that property and there is no way that the President can get it back regardless of

what happened later. That property was given as of that time. The Internal Revenue Service in many instances liked to get some kind of a paper to prove the intent of the giver, and that is the reason the paper was prepared in April of 1969.

I don't know what happened to that particular paper, whether it was lost or what but there was obviously a duplicate that was prepared and signed not by President Nixon but by someone that worked in the office lower on his staff. There is no showing that Mr. Nixon had any knowledge whatsoever of the additional paper that was found.

I would submit that President Nixon was very badly served by his personal accountants and in this particular instance by his attorney who supervised, but there is no showing that President Nixon in any way engaged in any fraud in taking the deduction that was allowed by law in respect to a gift which he made 9 months before the change of the law took place and some 4 or 5 months before the dateback in which the law became effective.

In connection with the other property in San Clemente, we heard a figure kicked around of \$17 million. I visited that property a number of years ago with a number of public officials in California. You couldn't spend \$17 million on that piece of property if you wanted to. The figure we heard later of \$67,000 as far as security improvements is probably much more accurate.

It is true that there is other property not owned by the President which is being used for governmental offices that is not too far away but that certainly isn't an improvement for the President's property in any way, shape, or form. The President, because of the difficulties here, I am sure, but perhaps for other reasons, has agreed to give that property at San Clemente back to the people of this country. There is no way his estate will be improved by anything that was done to that property.

There is no showing whatsoever that he will be increased in his net wealth. When Mr. Nixon took office as President of the United States, he was worth more money actually than he is at the present time. He is not a man that has become rich in public office. Actually, with the payment of the taxes that he has been assessed, he will undoubtedly be poorer than he was. I don't see how you could get the kind of misuse of internal revenue that has been testified to here today, and I certainly think there is no evidence whatsoever to support it.

The CHAIRMAN. The time of the gentleman has expired. All time on both sides has expired.

And the question now occurs on the adoption of the article as amended.

All those in favor please signify by saying aye.

[Chorus of "ayes."]

The CHAIRMAN. All those opposed.

[Chorus of "noes."]

The CHAIRMAN. The noes appear to have it. The noes have it.

Mr. McCLODY. Mr. Chairman, I demand call of the yeas and nays.

The CHAIRMAN. Call of the yeas and nays is demanded, and the call of the roll is ordered. All those in favor of the article as amended please signify by saying aye. All those opposed no.

The clerk will call the roll.

The CLERK. Mr. Donohue.

Mr. DONOHUE. No.  
 The CLERK. Mr. Brooks.  
 Mr. BROOKS. Aye.  
 The CLERK. Mr. Kastenmeier.  
 Mr. KASTENMEIER. Aye.  
 The CLERK. Mr. Edwards.  
 Mr. EDWARDS. Aye.  
 The CLERK. Mr. Hungate.  
 Mr. HUNGATE. No.  
 The CLERK. Mr. Conyers.  
 Mr. CONYERS. Aye.  
 The CLERK. Mr. Eilberg.  
 Mr. EILBERG. Aye.  
 The CLERK. Mr. Waldie.  
 Mr. WALDIE. No.  
 The CLERK. Mr. Flowers.  
 Mr. FLOWERS. No.  
 The CLERK. Mr. Mann.  
 Mr. MANN. No.  
 The CLERK. Mr. Sarbanes.  
 Mr. SARBANES. No.  
 The CLERK. Mr. Seiberling.  
 Mr. SEIBERLING. Aye.  
 The CLERK. Mr. Danielson.  
 Mr. DANIELSON. Aye.  
 The CLERK. Mr. Drinan.  
 Mr. DRINAN. No.  
 The CLERK. Mr. Rangel.  
 Mr. RANGEL. Aye.  
 The CLERK. Ms. Jordan.  
 Ms. JORDAN. Aye.  
 The CLERK. Mr. Thornton.  
 Mr. THORNTON. No.  
 The CLERK. Ms. Holtzman.  
 Ms. HOLTZMAN. Aye.  
 The CLERK. Mr. Owens.  
 Mr. OWENS. No.  
 The CLERK. Mr. Mezvinsky.  
 Mr. MEZVINSKY. Aye.  
 The CLERK. Mr. Hutchinson.  
 Mr. HUTCHINSON. No.  
 The CLERK. Mr. McClory.  
 Mr. MCCLORY. No.  
 The CLERK. Mr. Smith.  
 Mr. SMITH. No.  
 The CLERK. Mr. Sandman.  
 Mr. SANDMAN. No.  
 The CLERK. Mr. Railsback.  
 Mr. RAILSBACK. No.  
 The CLERK. Mr. Wiggins.  
 Mr. WIGGINS. No.  
 The CLERK. Mr. Dennis.  
 Mr. DENNIS. No.



The CLERK. Mr. Fish.

Mr. FISH. No.

The CLERK. Mr. Mayne.

Mr. MAYNE. No.

The CLERK. Mr. Hogan.

Mr. HOGAN. No.

The CLERK. Mr. Butler.

Mr. BUTLER. No.

The CLERK. Mr. Cohen.

Mr. COHEN. No.

The CLERK. Mr. Lott.

Mr. LOTT. No.

The CLERK. Mr. Froehlich.

Mr. FROEHLICH. No.

The CLERK. Mr. Moorhead.

Mr. MOORHEAD. No.

The CLERK. Mr. Maraziti.

Mr. MARAZITI. No.

The CLERK. Mr. Latta.

Mr. LATTA. No.

The CLERK. Mr. Rodino.

The CHAIRMAN. Aye.

The CLERK. Mr. Chairman?

The CHAIRMAN. The clerk will report.

The CLERK. Twelve members have voted aye, 26 members have voted no.

The CHAIRMAN. And the article is not agreed to.

The Chair announces that this concludes the work of the committee under the proposal, resolution, which was adopted last week, and according to the terms of the resolution and as a result of our action, the Donohue resolution, together with those articles that have been agreed to, will be reported to the House.

Additionally, under the rules of the House, each member will be entitled to 3 calendar days in which to file supplemental, additional, or minority views, and then the form of the report of the committee, which will go the full House.

The Chair in this case, however, will allow until the close of business on Tuesday next, August 6, for members who wish to file such views.

Mr. McCLORY. Mr. Chairman? Mr. Chairman, will there be available to the members, prior to next Tuesday, a draft report prepared by the committee staff?

The CHAIRMAN. The committee staff will be preparing the report and it will be ready on Tuesday, next, and if the members are interested in inquiring of the committee staff as to the work, the committee staff, however, will not be required to have the report ready until next Tuesday.

Mr. McCLORY. Well, Mr. Chairman, the reason I asked is that it would assist the members with respect to separate, additional, or minority views, and so on if we could have available preliminarily the draft report of the committee staff, and then we could determine to what extent we want to file individual or separate or minority or whatever views.

Mr. RAILSBACK. Would the Chairman yield. Will the gentleman yield?

Mr. McCLODY. Yes; I will be happy to yield.

Mr. RAILSBACK. Mr. Chairman, I am also interested in this so-called bill of particulars, or a memorandum of the facts. Is that going to be circulated so that we can have an input or see what facts are going to be used in reference to supporting the individual subitems in articles I and II?

The CHAIRMAN. The Chair advises that what we are now discussing is the question of the committee report, with views of the various members who wish to filter the additional or minority or supplemental views. Those bills of particular that have been referred to during the course of the consideration of this resolution, those particulars will become part of the report in the manner in which we have already agreed to by the staff.

Mr. McCLODY. Mr. Chairman, I would just like to—

Mr. CHAIRMAN. Or by the committee.

Mr. McCLODY. I would like to clarify further—

Mr. RAILSBACK. I hope it is by the committee.

Mr. McCLODY. Mr. Chairman, I know that the document that we prepare and send the House will be one which will have permanent interest and have permanent value, and in my own case, insofar as any additional views that I might prepare, I would want to have sufficient time to be certain that they are consistent with the precedents and accurately project my individual views, and that is why it would help me, and I am sure it would help other members, if possibly we could have by this weekend a draft report from the committee staff so that we could thereafter prepare any additional views that we might want to file.

The CHAIRMAN. The Chair will advise that I think at this time what the Chair has advised with regard to the matter that we have just considered, I will conclude this committee meeting at this time and we will take up such other matters in an appropriate committee meeting where such business will be undertaken. However, I might say that staff is always available to the members in order that they may be assisted in the filing of whatever views they may seek to file.

Mr. McCLODY. Mr. Chairman, I just want to ask this additional question. Then is it your intention, Mr. Chairman, to have a committee meeting before the time for the filing of the report on next Tuesday?

The CHAIRMAN. Yes; the Chair so states.

Mr. McCLODY. Thank you, Mr. Chairman.

The CHAIRMAN. So, the committee stands adjourned until further call of the Chair.

Whereupon at 11:08 p.m., the committee was adjourned, subject to the call of the Chair.]

## APPENDIX

[NOTE.—On August 6, 1974, in a letter to Chairman Rodino, Albert E. Jenner, Senior Associate Special Counsel, clarified his statements concerning the function of a bill of particulars in an impeachment proceeding. Those statements may be found on pages 173 and 189, of this volume. The text of Mr. Jenner's letter is printed below.]

CONGRESS OF THE UNITED STATES,  
COMMITTEE ON THE JUDICIARY,  
Washington, D.C., August 6, 1974.

HON. PETER W. RODINO, JR.,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: In my view of the Transcripts of proceedings of the public debates participated in by the Members of the Committee on the Judiciary as to whether to recommend to the House of Representatives that President Nixon be impeached, I gave particular attention to the question and answer interchange between the gentleman from Wisconsin, Mr. Froehlich, and the gentleman from Maryland, Mr. Hogan, and me regarding the right to and the function and legal effect of a Bill of Particulars respecting a civil complaint, a criminal indictment, or an Article of Impeachment; and whether a Bill of Particulars or an amendment thereof served, in and of itself, to amend a complaint or an indictment or an Article of Impeachment; and whether specific authority to file or amend a Bill of Particulars need be obtained from one's client in a civil case or the Grand Jury in a criminal case or the House of Representatives in an Impeachment Proceeding.

Mr. Froehlich also inquired whether the filing by House Managers of a Bill of Particulars in an Impeachment Proceeding or amending the same after filing, would constitute an unconstitutional delegation of Impeachment or legislative power on the part of the House of Representatives, irrespective of whether the House Managers would do so on the basis of implied power or an express provision of a resolution of the House of Representatives adopted contemporaneously with its adoption of an Article of Impeachment.

I find the record unclear and in some respect misleading and erroneous.

The fact is that the matter is not a complicated one and the law respecting the right to obtain, and the filing of a Bill of Particulars, its function and its amendment, is well settled.

A Bill of Particulars is a pleading, and no more. It is not a discovery device, nor is it an evidence producing device. A Bill of Particulars is not designed to and may not be treated or employed for the purpose of obtaining evidence, or details of proof, or the theory of the filing party's case. It is simply a pleading through which the movant is supplied with clarifying ultimate facts as distinguished from evidence; that is, it is a means whereby clarification of a complaint, an indictment, or an Article of Impeachment is afforded upon a showing that the complaint or indictment or Article is vague or indefinite. Furthermore, a Bill of Particulars is limited to those matters not already in the possession or knowledge of the movant or readily available to him or which he is without reasonable means otherwise to obtain.

A party is not entitled to a Bill of Particulars as a matter of right. The granting of a motion for a Bill of Particulars is addressed to the sound discretion of the court. The party who moves for a Bill of Particulars must establish that clarification of the complaint, indictment or Article sought is necessary to enable him to prepare a defense and to prevent prejudicial surprise at the trial. He must also show that unless he obtains the information he seeks, he will be at a disadvantage in preparing for or conducting the trial. Motions for Bills of

Particulars are sparingly granted. The burden rests with the movant to show a particularized need.

The Bill of Particulars does not in any sense, legal or practical, constitute an amendment of or have the effect of amending a civil complaint, a criminal indictment or an Article of Impeachment. Parenthetically, the fact is that an indictment is not amendable in any event.

A Bill of Particulars does, however, limit the proof of the filing party to the specifics set forth in the Bill, as filed, or as amended or substituted on leave of court.

While Bills of Particulars, whether in civil, criminal, or Impeachment Proceedings, may be amended on leave granted, the court in exercising its discretion as to whether the proposed amendment or substitution may be filed, gives serious consideration to whether the amendment or substitution will prejudice the other party in his preparation for or conducting the trial, and surprise is a major consideration.

Particularized authority to file or amend a Bill of Particulars need not be obtained from one's client in a civil proceeding, a Grand Jury in a criminal proceeding, or the House of Representatives in an Impeachment Proceeding. Since, as I have said, a Bill of Particulars is simply another pleading in the case, the general attorney-client relationship, standing alone, constitutes sufficient authority for counsel to file or amend a Bill of Particulars. Referring to the Prosecutor in a criminal proceeding, it may be helpful to point out that his client is the Government. The prosecutor does not, and what is more, he need not obtain, nor would it be possible for him to obtain, authority from the Grand Jury to file or amend a Bill of Particulars. The function of the Grand Jury that returns the initial indictment ends upon the return of that indictment. In any event, a Grand Jury's function does not embrace Bills of Particulars. What the prosecutor must do, assuming an indictment is defective, is to re-present the matter to the same or another Grand Jury and obtain a superseding indictment which he files after obtaining leave from the court to withdraw the defective indictment.

Whatever the nature of the proceeding, civil, criminal or impeachment, counsel or a prosecutor or House Managers have inherent authority to prepare and file Bills of Particulars or to obtain amendment thereof. However, it has been the custom in Impeachment Proceedings, a wise one indeed, to include in the resolution electing or appointing the House Managers an express grant of authority to file or tender to the Senate Court of Impeachment all appropriate pleadings or amendments thereto, which necessarily includes a Bill of Particulars since it is only a pleading.

It follows from the foregoing that filing, tendering or amending, or substituting a pleading (including a Bill of Particulars) by the House Managers does not involve or in any respect constitute a delegation of legislative or Constitutional Impeachment power.

I wish again to advert to the fact that a Bill of Particulars is not a discovery device, that only ultimate fact information clarifying the filing party's pleading, as distinguished from evidence or theory, may be sought by the moving party, and that in any event a Bill of Particulars will not be required as to information, evidentiary or otherwise, already in the possession of the movant or otherwise available to him or theretofore provided to him in the course of pre-trial or other prior proceedings such as the weeks of evidentiary presentation proceedings before the Committee on the Judiciary throughout which the President's counsel, Mr. St. Clair, participated in full and received duplicate copies of all materials presented to the Committee.

I appreciate this opportunity to elucidate the record.

Cordially yours,

ALBERT E. JENNER, Jr.,  
Senior Associate Special Counsel,  
Impeachment Inquiry Staff.

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